# LITTLE-

## TONS TENVRES

in Engliſh.

Lately peruſed and
*amended.*



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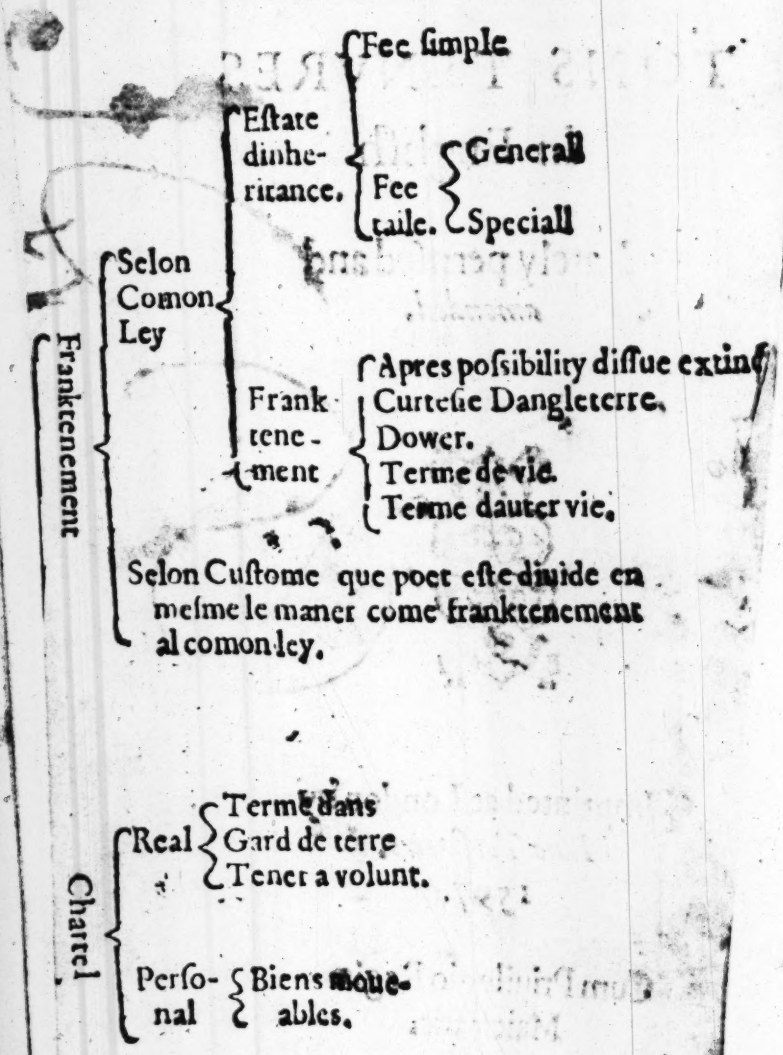
# A figure of the diuision of Possessions.



1 TEnaunt in fée simple is he which hath landes or tenementes to holde to him and to his heires for euer: And it is called in Latine Feodum simplex: for Feodum is called inheritance, and simplex is as much to say, as lawfull or pure, and so Feodum simplex is as much to say as lawfull or pure inheritance: For if a man will purchase landes or tenementes in fée simple, it behoueth him to haue these wordes in his purchase, to haue and to hold vnto him and to his heires: for these wordes (his heires) make the estate of inheritance. Anno 10. Hen. 6. fol. 38. for if any man purchase land by these wordes: To haue and to hold to him for euer. or by such wordes: To haue and to holde to him and to his assignes for euer: In these two cases he hath none estate but for terme of life, for that that hee lacketh these wordes (his heires) which wordes onely make the estate of inheritaunce in all feoffements and graunts.

2 And if a man purchase lands in fée simple, & die without issu, euery one that is his next cosin collaterall, of the whole blood, how far soeuer that he be from him of degrée, may inherite & haue the same land as heir vnto him. 3 But if there be father and son, & the father hath a brother which is vncle vnto the son, and the son purchaseth land in fée simple, & dieth without issu liuing ỹ father, the vncle shal haue the land, as

heir vnto the son, and not to the father (yet the father is more nigh of blood vnto the sonne) for that that there is a ground in the law, that inheritance may lineally discend, but not lineally ascend: yet if the son in such case die without issue & his vncle entreth into the land as heire vnto the son (so as he ought by the lawe) and after if the vncle decease without issue liuing the father, thē shal the father haue the land as heir vnto the vncle, & not as heir vnto the son, for that that he commeth vnto the land by collaterall discent, and not by lineal ascention.

4 And in such case where the son purchaseth land in fée simple, and dieth without issue, they of his blood on the fathers side shall inherite as heire vnto him, before any of the blood of the mothers side. But if he haue no heire on the fathers side, then shall the land discend vnto his heire on the mothers side. And this is the opinion of the Justices M.12.E.4.fol 34. But there it was holden if any land discende vnto a man by the fathers side which dyeth without issue, that his next heire on the fathers side shal inherit vnto him, that is to say, the next of blood of the father of the graundfathers side. And for default of such an heire they that be of the fathers blood of the part of the mother of the father, (that is to say) the graundmother ought to inherite. And if there be no such heire on the fathers side, then the Lord shall haue the land by Escheate. And so it is if a mā take a wife inheritor in fée simple,

which

which hath issue a sonne and dyeth, and the sonne entreth into the tenements as son and heire vnto his mother, and after dieth without issue, the heires on the mothers side ought to inherite the tenements, and not the heires on the fathers side.

And if there be no heirs on ỹ mothers side, then the Lord of whome the same land is holden, shal haue the same land by eschete. In the same manner it is if lands discend vnto the sonne on the fathers side, which entreth, & after dyeth without issue, the land shall discende vnto the heires on the fathers side, & not vnto the heires on the mothers side. And if there be none heires on the fathers side, then the Lord of whom the land is holdē, shal haue the same land by eschete. And so ye may sée the diuersitie, where the sonne purchaseth landes in fée simple, and where he cōmeth vnto those lands or tenements by discent on the fathers side or on the mothers side.

Also if there be thrée brethren, and ỹ middle brother purchaseth lād in fée simple and dyeth without issue, the elder brother shall haue the land by discent & not the yonger. Also if there be thrée brethren, and the yongest brother purchaseth land in fée simple and dyeth without issue: the elder brother shall haue the land by discent, and not the middle brother, for ỹ that the elder brother is more worthy of blod. 5

And it is to be vnderstood that no man shall haue land in fée simple by discent as heir vnto 6

any man, vnlesse he be his heire of the whole
blood. For if a man haue issue two sons by di-
uerse wiues, and the elder purchaseth land in fee
simple and dieth without issue, the yonger
brother shal not haue the land but the vncle of
the elder brother or some other his nigh cosin
shall haue it, for that that the yonger is but of
7 the halfe blood to the elder brother. And if a
man haue a sonne and a daughter by one ven-
tre, and a son by another ventre, & the son by
the first venter purchaseth land in fee simple &
dyeth without issue, the sister shall haue the
land by discent as heire vnto her brother and
not the yonger brother, for that that the sister
is of the whole blood to her elder brother.

8 And also where a mā is seised of land in fee
simple, and he hath issue a son and a daughter
by one venter and a son by another venter and
dieth, and the elder sonne entreth, and dyeth
without issue, the daughter shall haue the lād
and not the yonger sonne, and yet is the yō-
ger son heire vnto his father but not vnto his
brother. But if the elder son enter not into
the land after the death of his father, but dieth
before entre be made by him, then the yonger
brother may enter and haue the land as heire
vnto his father. But where the elder sonne
in the case aforesaid, entreth after the death of
his father and thereof haue possession, then
the sister shal haue the land. Quia possessio fra-
tris de feodo simplici, facit sororem esse hæred.
For the possession of the brother in fee sim-

ple

he maketh the sister to be heire.

But if there be two brethren by diuers benters, and the elder is seysed in fee simple & dieth without issue, and his uncle entreth as heire vnto him, which also dieth without issue, then the ponger brother may haue the lād as heire vnto his uncle, because he is of the whole bloud to him though he be but of halfe bloud vnto his elder brother.

And it is to be vnderstood that this worde (Inheritāce) is not only vnderstood where a man hath lands or tenemēts by discent of heritage, But also euery fee simple or fee tayle ꝑ a man hath by his purchase, may be said inheritance, for that, that his heires may inherite him. For in a writ of right that a mā bringeth of land, ꝑ was of his owne purchase, the writ shall say: Quam clamat esse ius & hæreditatē suam. That is to say, which he claymeth to be his right and his inheritance. And so it shalbe sayd in diuers other writtes which a man or a woman bringeth of their owne purchase, as it appeareth by the Register. 9

And of such thinges as a man may haue a manuel occupation, possession, or receyte, as of landes, tenementes, rentes, and such other, a man shall say in his pleading, and weye of barre, ꝑ one such was seysed in his demesne as of fee. But of such thinges as ipe not in manuel occupation &c. as of aduowson of a Church, and such manner thing: there he shal say, that he was seised as of fee, and not in his 10

demesne as of fée. And in latin it is in ỹ same case said. Quod talis fuit seisitus in dominico suo vt de feodo, that is to say, ỹ such one was seised in his demesne as of fée, & in the other, Quod talis fuit seisitus vt de feodo, that is to say, that one such was seised as of fée.

11 And note well that a man may not haue a more large ne greater estate of inheritance, then fée simple.

12 Also, purchase is called the possessiō of lāds or tenements that a man hath by his deede or by his agrément, vnto which possession he cō-meth, not by discent of any of his ancestors, or of his cosins, but by his owne deede.

## Fee taile.

TEnant in fée taile is by force of a statute of westminster the secōd, capitulo primo. For at the common law before the said statute, all inheritances were fée simple. For al the gifts which bin specified within the saide statute, were fée simple conditionally, as it appeareth by the rehearsall of the statute. And now by the same statute tenant in the taile is said in two maners, that is to say, tenant in taile generall, and tenant in taile speciall.

Tenant in taile generall, is where landes or tenements be giuen to a man and to his heires of his body begotten. In this case it is said generall taile, for that that whatsoeuer woman that the tenant taketh to wife, if hee haue many wiues, and by each of them hath

issue

ſſue, yet each one of theſe iſſues by poſſibilitie may inherite the tenementes by force of the ſaid gift, becauſe that euery ſuch iſſue is of his body ingendred.

In the ſame maner it is, where lands & tenements be giuen to a woman & to the heires comming out of her body, howbeit that ſhee haue many huſbãds, yet the iſſue that ſhe may haue by each huſband, may inherite as iſſue in the taile, by force of ſuch gifts. And therefore ſuch gifts been called generall taile.

Tenant in taile ſpeciall, is where landes and tenements be giuen vnto a man and his wife and the heires of their two bodies begotten. In ſuch caſe none may inherite by force of ſuch gifte, but thoſe that be ingendred betweene them two, & it is called eſpecial taile, for that if the wife die and he taketh another wife and hath iſſue, the iſſue of the ſecond wife ſhall neuer inherite by force of ſuch gift. Nor alſo the iſſue of the ſecond huſband if the firſt huſband die.

In the ſame maner it is, where lands and tenements be giuen by a man vnto an other with a wife, which is the daughter or coſin to the giuer, in frankmariage, which gifte hath inheritaunce by theſe wordes (franke mariage) vnto it annexed, howbeit that they be not expreſſely ſaid or rehearſed in the gifte that is to ſay, that their bodies ſhal haue theſe landes or tenementes to them and to their heirs betweene them two ingendred, and this

is

is said especial tayle, for that the issue of the second wife may not inherite. vt supra.

And note well, that this worde Talliare, is to say to set vnto some certeinty, or els limit vnto some certeine inheritance. And for that that it is limitted & set in certaine, what issue shall inherite by force of such giftes, and how long that the inheritance shall endure. Therefore it is called in latin Feodū talliatum. i. hæreditas in quadam certitudine limitata. For if tenant in generall tayle die without issue, the donor or his heires shall inherite as in their reuersion: in the same wise is it of the tenant in the tayle speciall &c. For in euery gift of the tayle without more saying, the reuersion of fee simple is in the donour.

And the donées and their heires shall doe to the donor and to his heirs, such seruices as the donour doth vnto his Lorde next aboue. Except the donées in franke mariage, which shall hold quietly from euery manner seruice, (vnlesse it be for fealtie) vntill the fourth degrée be past. And after that the fourth degrée is past, the issue in the fift degrée, and so forth the other issues after him, shall holde of the donour and of his heires as they hold ouer, as is aforesaid.

And the degrées in franke mariage shal be accompted in such maner, that is to say, from the donour to the donées in frank mariage the first degrée, for that that the wife that is one of the donées ought to be daughter, sister, or other

other cosin to the donor. And from the donées vnto their issue shall be accompted the second degree. And from their issue vnto their issue, the third degree and so forth &c.

And the cause is, for that after euery such gift, the issues that come of the donor, and the issues that come of the donées after the fourth degree past of both parties in such fourme to be accompted, may betwixt them by the law of holie Church intermarrie. And that the donée in frankmariage shall be the first degree of the fower degrees, a man may see in a plee vpon a writ of right of warde, Anno 31. Edwardi 3. where the plaintife pleadeth that his ayel or grandfather was seised of certayne landes &c. And that he held of another by knights seruice &c. which gaue the land vnto one Raufe Holland with his sister in frankemariage &c. And also these tayles before said, be specified in the said statute of Westminster the second.

And there bee diuers other estates in the tayle, howbeit that they bee not specified by expresse wordes in the said statute, but they bee taken by the equitie of the Statute, As if landes be giuen vnto a man and to his heires males of his bodie engendred. In such case his heire male shall inherite, and the issue female shall neuer inherite, yet in these other tailes aforesaied it is otherwise. In the same maner it is if landes bee geuen to a man and to his heires females of his bodie engendred.

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In this case his issue females shall inherite by force and fourme of the said gifte, and not the issue male, for that in such cases where the gift is who ought to inherite & who not, the will of the donour shall be observed. And in case where landes be giuen vnto a man and to his heires males issuing of his body and he hath issue two sons and deceaseth, the elder sonne entreth as heire male, and hath issue a daughter and deceaseth, his brother shall haue the land and not the daughter, for that the brother is heire male. But it shalbe otherwise in these other tailes aforesaid, which bin specified in the said statute, the daughter shall inherite before the brother.

And if landes be giuen vnto a man, and to his heires males of his body ingendred and he hath issue a daughter, which hath issue a sonne and deceaseth, and after that the donour deceaseth: in this case the sonne of the daughter shall not inherit by force of the taile, for that whosoeuer shall inherite by force of a gifte in the tayle made vnto the heires males, behoueth to conuey his discent alway to the males M. decimo octauo Edwardi tertii folio 25. But in such case the donour shall enter for that the donée is dead without issue male in the lawe. In so much that the issue of the daughter may not conuey to him the discente by heire male. And in the same manner it is where landes bee giuen to a man and to his wife and to his heires

males

males of their two bodies ingendred.

Also, if tenements be giuen to a man and his wife, and to the heires of the body of the man ingendred, in this case the husband hath estate in the generall taile, and the wife but estate for terme of life.

Also if lands be giuen to the husband and to the wife, and to the heires of the husband which he ingendreth of the body of the wife. In this case the husband hath estate in the speciall taile, and the wife but for terme of life.

And if the gift be made to the husband and to the wife, and to the heires of the wife of her body by the husbande ingendred: then the wife hath estate in the speciall taile, and the husband but for terme of life. But if lands be giuen to the husbād and the wife, and to the heires that the husband ingendred on the bodie of the wife: In this case both haue estate in the taile, for that this word (heires) is limited no more to the one then to the other.

Also if lands be giuen to a man and to his heires that he ingendreth on the body of his wife: In this case the husband hath estate in the taile speciall, and the wife nothing.

Also if a man haue issue a sonne, and deceaseth, and the land is giuen to the sonne, and to the heires of the body of his father ingendred, this is a good tail, and yet the father was dead at the time of the gift.

Also

Also there be many other estates in the taile by the equity of the said estatute, that be not specified here. But if a man giue lands or tenemẽts to another, to haue and to hold to him and to his heires males, or to his heires females, he to whom such gift is made hath fée simple, for that it is not limitted by the gift of what body the issue male or female shall bée, and so it may not in eny thing be taken by the equity of the said estatute, and therefore he hath fée simple.

## Tenant in taile after possibilitie of issue extinct.

TEnaunt in the taile after possibility of the issu extinct, is where as lands or tenemẽts be geuen vnto a man and to his wife [illegible] taile, if one of them decease without issue, he that suruiueth is tenant in the taile after possibility of issue extinct. And if they haue issue, during the life of the issue, hee that suruiueth shall not be said tenant in the taile after possibilitie of issue extinct: yet if the issue decease without issue, so that there be none aliue that may inherite by force of the taile, then he that suruiueth of the donées is tenant in the taile after possibility of issue extinct.

Also, if landes bee giuen to a man and to his heires that be ingendred on the body of his wife: In this case the wife hath nought in the tenements, and the husband is seised as

as donée in speciall taile. And in this case if the wife decease without issue of her body ingendred by her husband, then the husband is tenaunt in the taile after possibility of issue extinct.

And note well, that none may be tenaunt in the taile after possibility of issue extinct, but one of the doneés, or the donée in speciall taile, for the donée in generall tail may neuer be said tenant in the taile after possibility of issue extinct, for that alway during his life, he may by possibilitie haue issue that may inherite by force of the same taile. And so in the same maner the issue that is heire vnto the doneés in a special taile, may not be said tenant in taile after possibility &c. causa qua supra.

And tenant in taile after possibility of issue extinct shall neuer be punished of wast, for the inheritance that once was in him. Anno 10. Hen. 6. fol. 1. But he in the reuersiõ may enter if he doth alien in fée. An. 45. E. 3. fol. 22.

## Tenaunt by the curtesie of England.

TEnaunt by the Curtesie of England, is where a man taketh a wife seised in fée simple, or in fée taile generall, or as heire in the tail special, & hath issue by the same wife male or female borne aliue. The issue after being dead or aliue, if the wife decease, the husband shal hold the same during his life by the Law of

of England, and this is called tenant by the Curteſie, for that it is not vſed in any other Realme but onely in England. And ſome ſay that he ſhal not be ſaid tenant by the Curteſie, but if the child that he hath by his wife be heard crie, for by the crie is the proofe that the child that he had by his wife, was borne.

## Tenaunt in Dower.

TEnant in Dower is, where a man is ſeiſed of certaine lands or tenements in fee ſimple or in generall taile, or as heire in the taile ſpecial, and taketh a wife and deceaſeth, the wife after the deceaſe of her huſbād ſhalbe endowed of the third part of ſuch landes or tenements that were her huſbands any time during the couerture, to haue and to holde to the ſame wife in ſeuerality, by meetes and boundes for terme of her life, whether ſhe haue by her huſband iſſue or none, and of what age that the wife be, ſo that ſhe paſſe the age of nine yeres at the time of her huſbands death, or elſe ſhee ſhall not be endowed.

And note wel, that by the common law the wife ſhal not haue for her dower but the third part of the tenements, which were her huſbands during the eſpouſels. By cuſtome of ſome countrey ſhe ſhall haue the halfe, and by cuſtome of ſome Towne, or Borough, ſhe ſhall haue the whole: And in al theſe caſes ſhe ſhal be ſaid tenant in dower.

Alſo

Also there is two other maner of Dowers, that is to say, dower called dowment at the Church dore, and dower called dowement by the fathers assent. Dowment at the church dore, is where a man of full age is seised in fee simple which shall bee wedded vnto a wife, when he commeth to the Church dore, and there after affiance and trueth pleight made betweene them, endoweth his wife of his whole land, or of the halfe, or lesse parcell, and there openly declareth the quantitie, and the certaintie of his land that shee shall haue for her dower: In this case the wife after the death of her husband shall enter into the saide quantity of land, of which her husband endowed her, without the assignement of any man. Dowmēt by the fathers assent is, where the father is seised of landes or tenementes in fee, and his sonne and heire apparant (when hee is wedded) endoweth his wife at the Church dore of parcell of the landes or tenemēts of his fathers, by thassent of his father, and assigneth the quantity of the parcels: In this case after the death of the sonne, the wife shall enter into the same parcell without the assignement of any other. But it hath bin said in this case, that it behoueth the wife to haue a deede of the father, prouing his assent and consent of such endowment. And if after the death of her husband shee enter and agree to any such dower of the said two dowers at the Church dore, then she is concluded to claime

any other Dower, by the common lawe of any landes or tenements, which were of the said husband. But if she will, she may refuse such dower at the Church dore, and then she may be endowed after the course of the common Lawe. And note well, that no wife shall be endowed of the fathers assent, in the fourme aforesaid, saue where the husband is sonne and heire apparant to his father.

Inquire of these two cases of Endowement at the Church dore &c. if the wife at the time of the death of her husband passe not the age of nine yeres, if she shall haue such dower or no.

And note well, that in all cases where the certaintie appeareth, what landes or tenementes the wife shall haue for her dower, the wife may enter after the death of her husbande, without assignement of any other: But where the certainetie appeareth not, as to be endowed of the third parte, to haue in seuerall, or to be endowed of the halfe after the custome, to hold in seuerally: In such cases it behoueth that her Dower bee vnto her assigned after the death of her husbande, because it is not limitted before the assignement, what partes of landes or tenementes shee shall haue for her dower. But if there bee two Ioyntenants of certaine lands in fee, and the one alieneth that, that to him pertayneth and belongeth, to another in fee, which taketh a wife and after dyeth: In this case

the

the wife for her Dower shall haue the thirde parte of the halfe that her husband purchased, to holde in common, and occupie in common as her part amounteth, with the heire of her husbande, and with the other Ioyntenaunt which alieued not, for that in such case her Dower may bee assigned by meetes and bounders.

And it is to be vnderstode, that the wife shall not be endowed of landes or tenementes that her husband iointly held with another at the time of his death. But where he holdeth in common otherwise it is, as in the case aforesayd. And it is to wit, that if the tenaunt in taile endowe his wife at the Church dore as is aforesayde, that shall serue for little or naught to the wife, for that, that after the death of her husband the issue in the tayle may enter vpon the possession of the wife, and so may he in reuersion if there be no issue in the taile aliue.

Also if a man seised in fee simple being within age, endow his wife at the Church dore and dieth, and the wife entreth. In this case the heire of her husband may put her out. But otherwise it is as it seemeth where the father is seised in fee, and the son within age endowe his wife, of his fathers assent, the father then being of full age.

And there is another Dower which is called Dowement De la pluis beale. And that is in such case, that a man is seised

of xl. acres of land, and he holdeth xx. of the said xl. acres of one man by knights seruice, and the other xx. acres of another in socage, & taketh a wife, and hath issue a son, and dyeth, his son being within the age of 14. yéres, and the Lorde of whome the lande is holden by knights seruice, entreth into the xx. acres of land holden of him, and them hath and occupyeth as warden in chiualrie during the childes nonage, & the childes mother entreth in the remnant, and it occupyeth as garden or warden in Socage. If in this case the wife bring a writ of Dower against the warden in chiualrie, to bee endowed of the tenements holden by knights seruice in the kings Court, or in any other Court, the garden in chiualry may pleade in such case al the matter, and shewe how the wife is warden in socage as is aforesaide, and pray that it may be adiudged by the court, that the wife endow her selfe of the most faire, called Plusbeale, of the tenements that she hath as wardē in socage, after the value of the third part that she claymeth to haue of the tenements in chiualrie by her writ of Dower, and if the wife may not gainesay it, then the iudgement shall be made, that the warden in chiualry shal hold the lands holden of him during the nonage of the childe quite from the woman &c. And that the woman may endowe her selfe of the most faire part of the landes that she hath as warden in Socage to the value of the third

part

part that the warden in chiualry hath &c.

And after such iudgement giuen, the wife may take her neighbors, and in their presence endow her selfe by meetes and bounds of the fayrest part of the tenements that she hath, as warden in Socage, to the value of the third part of the lands that the warden in chiualry hath, and that to haue and holde for terme of her life. And such dower is called dower of the faireſt part, or De pluis beale.

With this agreeth P.45.Ed.3.fol.4. But there it was said, that after the time that the heire come to his full age, the wife shall haue a new action of dower against the heire, to be endowed of the third part of all that the man died seised. And note well that such dowment may not be, but where the iudgement is giuen in the kings court, or in some other court. And the wife may do this for saluation of the estate of the warden in chiualry during the nonage of the childe. And so ye may see fiue manner of dowers, that is to say, dower by the common Law, dower by custome, dower at the church dore, dower of the fathers assent, and dower of the most faire. And remember that in euery case where a man taketh a wife seised of such estate of tenementes &c. so that the issue that he hath by his wife may by possibility inherite the same tenementes of such estate that the wife hath, as heire to the wife: In such case after the wife is dead, hee shall haue the same tenementes by the curtesie of Eng-

land and otherwise not.

And also in euery case where the wife taketh an husband seised of such estate of tenements &c. so that by possibility it may happē the wife to haue some issue by her husband, & that the same issue may by possibility inherite the same tenements of such estate that the husband had as heire to his father: of such tenements she shall haue her dower, and otherwise not. For if the tenements be giuen vnto a man and to his heirs that he getteth on his wiues body, in such case the wife hath nought in the tenemēts, and the husband hath estate but as donee in special taile. Yet if the husband die without issue, the same wife shalbe endowed of the same tenements, for that the issue that she by possibility might haue had by ỹ same husband, may inherite the same tenements. But if the wife decease, liuing the husband, which after taketh another wife, the second wife shall not be endowed in this case. Causa qua supra.

A man was seised of certaine landes, and tooke wife, and after aliened the same landes with warranty, and after the feoffour and the feoffee died, and the wife of the feoffor bringeth an action of Dower against the issue of the feoffee, and he vouched the heire of the feoffour, and during the voucher and not termined, the wife of the feoffee bringeth an action of Dower against the heire of the feoffee, and demaundeth the third parte of all that her husband was seised, and would not demand

mand the third part of those two partes that her husband was seised, it was adiudged that shee should haue no iudgement vntill the time that the other plee were determined.

And also note that Vauisor saith, that if a man be seised of lands, and committeth Felonie, & alieneth, and after is attainted, the wife shall haue good actiõ of dower against the feoffee. But if it be escheted vnto the king, or vnto the lord, she shal haue no writ of dower. And so see the diuersity, and inquire the cause.

## Tenant for terme of life.

TEnant for terme of life is, where a man letteth landes or tenementes to another for terme of life of the lessee, or for terme of life of another man: In such case the lessee is tenaunt for terme of life. But by common language, hee that holdeth for terme of his owne life, is called tenant for terme of life, and he that holdeth for terme of another mans life, is called tenaunt for terme of another mans life. And it is to be vnderstode, that there is feoffour and feoffee, donour and donee, lessour and lessee. The feoffour is properly where a man infeoffeth an other in any lands or tenements in fee simple, he that maketh the feoffement is called the feoffor, and he to whom the feoffement is made, is called feoffee. And the donour is properly, where a man giueth certaine landes or tenementes to another in

the taile, he that maketh the gift is called donor, and he to whom the gift is made is called donee. And lessour is properly where a man letteth to another certaine landes or tenements for terme of life, for terme of yeres, or to hold at will, he that maketh the lease is called lessor, and he to whom the lease is made is called lessee, and euery one that hath estate in lands or tenements for terme of his owne life, or for terme of another mans life, is called tenant of freehold. And none of lesse estate may haue freeholde, but they of greater estate may haue freeholde, for tenaunt in fee simple hath freeholde, and tenant in the taile hath also freeholde.

## Tenant for terme of yeeres.

TEnant for terme of yéres is, where a man letteth lands or tenements to another for terme of certaine yeeres after the number of yéres that is accorded betweén the lessor and the lessee, and when the lessee entreth by force of the lease, then is he tenant for term of yeres, and if the lessor in such case reserue to him a yerely rent vpon such lease, he may chose for to distraine for the rent in the tenements letten, or els he may haue an Action of debt for the arrerages against the lessee. But in such case it behoueth that the lessour bee seysed in the same tenements at the time of his lease, for

it

It is a good plee for the lessee to say, that the lessor had nothing in the tenementes at the time of the lease, except the lease be made by deede indented, in which case then such plee lyeth not for the lessee to plead.

And it is to be vnderstoode, that in a lease for terme of yeres, by deede or without deede, it needeth no liuery of seisin to be made to the lessee, but he may enter whensoeuer he will by force of the same lease. But of feoffementes made in the Countrey or giftes in the taile, or leases for terme of life, in such cases where freehold shal passe, if it be by deede or without deede, it behoueth to haue liuery of seisin &c. But if a man let lands or tenements by deede or without deede for terme of yeres, the remainder ouer to another for terme of life, or in the taile, or in fee, then in such case it behoueth that the lessor make liuery of seisin to the lessee for terme of yeres, or els there shall nothing passe to them in the remainder, though the lessee enter in the tenements. And if the termor in such case enter before any such liueries of seisin made vnto him, then is the freehold & the reuersion in the lessor. But if he make any liuery of seisin vnto the lessee, then is the freehold with the fee to them in the remainder after the forme of the grant, & will of the lessor.

And if a man will make a feoffement by deede or without deede, of landes or tenements that he hath in many Townes in one Shire, if the liuery of seisin be made in one par-

parcell of the tenementes in one towne in the name of all, it sufficeth for all the other lands or tenements comprehended in the same feffement, in all other townes in the same Shire. But if a man make a deede of feoffement of lands or tenements in diuers Shires, there it behoueth him to haue in euery shire a liuery of seisin. And in such case a man shall haue by the graunt of another fee simple, fee taile, or freeholde, without liuery of seisin. And if two men be, & each of them is seised of a quantitie of land within one shire, & the one graunteth his land to the other in exchange for that land that the other hath, and in the same maner the other granteth his land vnto the first grantor in exchange for the land that the first grauntor hath: In this case eche may enter in the others lands so taken in exchãge, without any liuery of seisin. And such exchange made by wordes, of tenementes within the same shire without any writing, is good inough. And if the lãds or tenements be in diuers shires, that is to say, if that the one haue in one shire, & that the other haue in another shire, it behoueth to haue a deed indented made betweẽ thẽ of such exchange.

And note, that in exchange it behoueth that the estates that both parties haue in the lands so exchanged, be equal: For if the one willeth & granteth that the other shal haue his land in the taile, for the land that he hath of the grant of the other in fee simple, though the other agree to that, yet this exchange is but void, for

that

that the estates be not euen.

In the same maner it is where it is granted and agreed betweene them, that the one shal haue in the one land fee taile, & the other shall haue in the other land but terme of life. Or if one shall haue in the one lande fee taile generall, and the other in the other lande fee taile especiall &c. So alway it behoueth that in exchange the estate of both parties be euen, that is to say, if the one haue fee simple in the one land, that the other shal haue such estate in the other land, and if the one haue fee taile in the one lande, then the other shall haue likewise in the other lande. Et sic de aliis statibus. But it is nothing to charge of the euen value of the lands, for though that the land of the one is so much more in value then the land of the other, this is nothing to the purpose, so y the estates made by the exchaunge bee euen, and in exchaunge bee two graunts, for euery party graunteth his land to the other in exchange, and in each of their grants mention shall bee made of the exchange.

And if a man let land to another for terme of yeeres, though the lessor die before the lessee enter into the tenements, yet may he enter into the tenements after the death of the lessor, for that, that the lessee by force of the lease hath right incontinent to haue the tenementes after the fourme of the lease. But if a man make a deede of feoffement vnto another, and a letter of attorney to a man to deliuer to him seisin

seisin by force of the same deede, yet if the liuery of seisin be not made in the life of him that made the deede, it auaileth not, for that the other hath no maner of right to haue the tenements after the purport of the deede before the liuery of seisin &c. And if no liuery be made, then after the death of him that made the deed, the right of such tenements is incontinently in his heire or in some other. Also if tenemẽts be let to a man for terme of halfe a yere, or for terme of a quarter of a yere &c. In such case if the lessee make waste, the lessour shall haue against him a writ of waste, and the writ shall say. Quitenet ad terminum annorum. But he shall haue a special declaration vpon the troth of this matter, and the plee shall not abate the writ, for that that he may haue no other writ vpon the matter, An. 7. H. 7. fo. 1.

## Tenant at will.

TEnant at will is, where landes or tenements be letten by a man vnto another: To haue and to hold to him at the will of the lessor, by force of which lease ỹ lessee is in possession. In such case the lessee is called tenãt at will, for that he hath no certain sure estate for the lessor may put hym out at what time it pleaseth him, yet if the lessee sowe the lande, and the lessor (after the sowing and before that his graines be ripe) put him out, yet shall the lessee haue his graines, and shal haue free egresse and regresse to reape and to carrie his

his graines, for that he wist not at what time his lessour would enter vpon him. Otherwise it is if tenant for terme of yeres before the end of his terme soweth the lande, and the terme end before that his graines be ripe. In this case the lessor, or he in the reuersion shall haue the graines, for that the fermor knewe well the certeine of his terme, and when his terme should be ended.

Also if a house bee let to a man to holde at will, by force of which the lessee entreth into the house, within which house he bringeth his houshold stuffe, and after the lessor putteth him out, yet shall he haue free entre, egresse, and regresse in the same house by reasonable time to carrie his goods and houshold stuffe. And if a man be seised of a house in fee simple, fee taile, or for terme of life, the which hath certaine goods within the same house, and maketh his executors and deceaseth, whosoeuer after his death hath the house, yet shall his executors haue free entre, egresse, and regresse to carrie out of the house the goods of their testators by a reasonable time.

Also if a man make a deede of feoffement vnto another of certaine land, and deliuereth to him the deed, but no liuery of seisin. In this case he to whom the deede is made may enter into the land, and holde and occupy it at the will of him that made the deed, for that, that it is proued by the words of the deede, that it is his will that the other shal haue the land. But

by

he that made the deede, may put him out whē he will.

Also if an house be let to hold at will, the lessee is not holden to sustaine or repaire the house, as tenant for terme of yeeres is holden to do. But if the lessee at will make vōluntary waste, as in putting downe of houses, or in cutting or felling of trees: It is said that the lessour shall haue for that against him an action of Trespas. As if I deliuer to a man my sheepe to dung or marle his land, or mine oxē to eyze his land, and he slayeth the beastes, I may well haue an action of Trespas against him notwithstanding the deliuerie.

Also if the lessor vpon such lease at will reserue vnto him a yeerely rent, he may distraine for the rent behinde, or haue for that an action of debt at his owne choise, H.6. R.2. in a Repleuin.

## Tenant by Copie of Court Rolle.

TEnant by Copy of Court roll is, as if a mā be seised of a Manour, within which Manour there is a custome, and hath been vsed in time out of mind, that certaine tenants within that same Manor haue vsed to haue landes or tenements, to holde to them and to their heires in fee simple or in fee taile, or for terme of life &c. at the will of the Lorde, after the custome of the same Mannor, and such tenaunt may not alyen the lande by deede, for then the

the lord may enter as in a thing forfait to him. But if he will alien his lande to another, him behoueth after some custome to surrender the tenements in some Court &c. into the Lordes handes, to the vse of him that shall haue the estate, in such forme, or to such effect.

Ad hanc Curiam venit A. de B. & sursum reddidit in eadem Curia, vnum mesuagium &c. in manus domini, ad vsum E. de A. & hæredum suorum, vel hæredum de corpore suo exeunt vel pro termino vitæ suæ &c. Et super hoc venit predictus E. de A. & cepit de domino in eadem curia mesuagium predictum &c. Habendum & tenendum sibi & heredibus suis, vel sibi & heredibus de corpore suo exeuntibus, vel sibi ad terminum vitæ suæ, ad voluntatem domini, secundum consuetudinem manerii, faciend. & reddend. inde redditus debit', seruitia, & consuetudines inde prius debita, & de iure consueta, Et dat domino de fine &c. Et fecit domino fidelitatem &c. That is to say, A. of B. commeth vnto this Court, and surrendreth in the same court a mease &c. into the hands of the Lord, to the vse of E. of A. and his heires, or the heires issuing of his bodie, or for terme of life &c. And vpon that commeth the foresaid E. of A. and taketh of the Lord in the same court, the foresaid mease &c. To haue and to hold to him and to his heires, or to him and to the heirs issuing of his body, or to him for terme of life, at the Lords will, after the custome of the manor to do and yelde

therefore rents, dets, seruices, and customes therof before due and accustomed &c. and giueth the Lord for a fine &c. and maketh vnto the Lord his fealty &c. And such tenaunts be called tenants by Copie of Court Rolle, for that they haue no other euidences concerning their tenements, but the Copies of the Court Rolles: And such tenants shall not implead nor be impleaded for their tenementes by the kings writ: But if they will implead other for their tenementes they shall haue a playnt made in the Court of the Lord in such forme, or to such effect. A. de B. quæritur versus C. de D. in placito terræ, videlicet, de vno mesuagio, quadraginta acris terr', quatuor acris prati &c. cum pertinentiis. Et facit protestationem sequi querelam istam in natura breuis domini Regis assisæ mortis antecessoris ad communē legem, vel breuis domini Regis Assise noue disseis. ad communem legem, That is to say, A. of B. complaineth against C. of D. of a plee of land: that is to say, of a mease, and forty acres of land, fower acres of medowe &c. with the appurtenances, And maketh protestation to sue his plaint in nature of the kings writ of Assise of the death of his antecessor at the common lawe, or by writ of our Soueraigne Lord the king, of Assise of nouel disseisin at the common Law, or in nature of some other writ &c. pledges to prosecute, F. G &c. And though that some such tenants haue inheritance after the customs of the maner, yet

they

they haue none eſtate but at the Lordes will, and after the courſe of the common Lawe, for it is ſaid, if the Lorde put them out, they haue no other remedy but to ſue vnto the Lord by petition: For if they had any other remedie they ſhould not be ſaid tenants at the Lordes will after the cuſtome of the Manor, but the Lord will not breake the cuſtome that is reaſonable in ſuch caſes. But Brian chief Juſtice ſaith, that his opinion alwaies hath been, and alwaies ſhall be, if ſuch a tenant by cuſtome (paying his ſeruices) be caſt out by the Lord, he ſhall haue an action of treſpas againſt him, H.2.E.4.fol.80. And likewiſe was the opinion of Danby chiefe Iuſtice M.7.E.4.fol.19, for he ſaith, that the tenant by the Cuſtome, is aſwell inheritable to haue the land after the cuſtome, aſwell as he that hath franketenement by the common Law.

TEnants by the Yarde, be in ſuch nature as tenants by Copie of Court Roll: But the cauſe for which they be called tenants by the rodde, or yarde, is, for that when they will ſurrender their tenementes into the Lordes hand, to the vſe of another, they ſhall haue a little yarde or rodde by the cuſtome and vſe, in their handes, which they ſhall deliuer vnto the Steward or Bailiffe, after the Cuſtome and vſe of the manor, and hee that ſhall haue the land, ſhall take the ſame land in the court, and his taking ſhall bee entred in the Rolle. And the Steward, or the bailiffe, according to

the custome, shall deliuer vnto him that taketh the land, the same yard or another yarde in the name of seisin. And for this cause they be called Tenaunts by the yarde. But they haue none other Euidence but Copie of the Court Rolle.

And also in diuers Lordships and Mannors there is such a custome, if such a tenaunt that holdeth by the Custome will alien his lands or tenements, he may surrender his lands vnto the Baylife, or to the Réeue, or to two sad men of the same Lordship, to the vse of him that shal haue the land, to haue in fée simple, fée tayle, or for terme of life &c. and all that shalbe presented at the next court. And then he that shall haue the land by Copie of Court Roll, shall haue the same land after the intent of the surrender. And it is to wit, that in dyuers Lordships, and diuers manors, there be made diuers Customes in such cases, as to take tenements, and as to pled, & as touching other things and customes to be done, and all that, that is not against reason, may well bée admitted and alowed. And such tenants that hold after the custome of a Seignorie, or after the custome of a mannor, though they haue estate of inheritãce after the custome of ỹ lordship, or of the manor, yet because they haue not any fréehold by the course of the common law they be called Tenants of base tenure.

And diuers diuersities there be betweéne a tenant at will, which is in by the lease of his lessor

lessour by the course of the common lawe, and tenaunt after the custome of the manor in the fourme aforesaid. For tenant at will after the custome may haue estate of inheritance, as it is aforesaid at the lords will after the custome and vsage of the Manor: But if a man haue lands or tenements which be not within such Manor or Lordship where such custome hath bin vsed in the fourme aforesayd, and will le such lands or tenementes to another, to haue and to hold to him and to his heires at the will of his lessor, these wordes, to the heires of the lessee be voide, for this is the cause, if the lessee die and his heire enter, the lessor shall haue a good action of Trespas against him, but not so against the heire of the tenant by the custome in any case &c. for that the custome of the manor in some case may helpe him to barre his Lord in an action of Trespas.

Also tenant by the custome in some places ought to repaire and sustaine the houses, and the other tenant at will ought not. Also one by the custome shall doe fealty, and the other not. And diuers other diuersities there be betweene them.

Thus endeth the first book.

## Homage.

HOmage is a moſt honourable ſeruice and moſt humble ſeruice of reuerence that a Franketenaunt may doe to his Lorde. For when the Tenaunt ſhall make Homage to his Lorde, he ſhall be vngirt, and his heade vncouered, and his Lorde ſhall ſit, and the Tenaunt ſhall kneéle beſore him on both his knées, and hold his hands ioint-ly together betweéne the handes of his Lord, and ſhall ſay thus. I become your man from this day forwarde of life and limme, and of earthly worſhip, and vnto you ſhall be true and faithfull, and beare you faith for the tene-ments that I claime to holde of you, (ſauing the faith that I owe vnto our Soueraigne Lord the king.) And then the Lord ſo ſitting ſhall kiſſe him.

But if an Abbot, or Prior, or anie other man of religion ſhall make homage vnto his Lorde, he ſhall not ſay. I become your man, for that he hath profeſſed himſelfe onely to be Gods man. But he ſhall ſay thus, I doe you homage, and vnto you ſhall be true and faith-full, and beare you faith for the tenementes that I claime to holde of you, Sauing the faith that I owe vnto our ſoueraigne Lorde the King.

Alſo if a woman ſole ſhall make Ho-mage vnto the Lorde, ſhée ſhall not ſaie, I become your woman, for that is not con-uenient for a woman to ſay, that ſhe ſhall be-come a woman to any but onely to her huſ-

band

band when she is wedded. But she shall saie I make vnto you Homage, and to you shal be true and faithfull, and shall beare you faith for the tenements that I holde of you, sauing the fayth that I owe to our Soueraigne Lorde the King.

But if a man haue seuerall tenācies which he holdeth of seuerall Lordes, that is to saye, euery tenancy by homage. Then when he maketh homage vnto one of his Lordes, he shall saye in the ende of his homage. Sauing the faith that I owe vnto the king and vnto my other Lords.

And note well that none make homage, but such as haue estate in fée simple, or in fée tayle in his owne right, or in any other mans right. For it is a ground in the Law, that he that hath estate but for terme of life, shal make none homage, nor take none homage.

For if a woman haue landes or tenements in fée simple or in fée taile, which she holdeth of her Lorde by homage, and taketh an husband and hath issue, then the husbande in the life of the wife shall make homage, for that hée hath title to haue the lande by the curtesie, if he suruiue his wife. And also he holdeth in the right of his wife. But afore issue betwéene them, the homage shall be made in both their names, but if the wife decease before homage made by the husband in the wiues life, and the husbande holdeth himselfe in as tenaunt by the curtesie, he shall make no homage vnto

his Lord, for that he hath then none estate but for terme of life. More shalbe said of homage in the tenure of homage auncestrel.

## Fealty.

FEalty is as much to say, as Fidelitas in latin, and when a frankstenant shall make fealty vnto the lord, he shall hold his right hand vpon a booke, and shall say thus.

Here you this my lord, that I vnto you shal be faithfull and true, and beare you faith for the landes and tenementes that I clayme to hold of you, and truly to you shall do the Customes and seruices that I ought to do vnto you at termes assigned, as God me help and al his Saints, and then he kissed the booke. But he shall not kneele when he maketh his fealty, nor shall make such humble reuerence, as is aforesaid in homage. And great diuersity ther is had betweene making of fealty, and of homage. For homage may not be made butto the Lord himselfe. But the steward of the lords court, or ỹ bailife may take fealty for the lord.

Also tenant for terme of life shal make fealty, and yet he shall make none homage, and diuers other diuersities there bee betweene homage and fealtie.

Also a man may see a good note, Anno 15. Edw. 3. where and howe a man and his wife made homage and fealty in the common banke which is written in such forme. Note that

John Lewknor & Elizabeth his wife made homage vnto William Thorpe in this manner: The one and the other held iointly their hands betweén the hands of William Thorp, & the husband said in this wise: We vnto you make homage, & beare you faith for the landes that we hold of A. your conusor, which hath graunted your seruices in B. and in C. and the other townes &c. against al men (sauing the faith that we owe vnto our soueraigne Lord the King, and to his heires, and to our other Lords) and the one and the other kissed him. And after they made fealty, & the one and the other held their hands togither vpon a booke, and the husband said the words, & both kissed the booke. More shall be said of Fealty in the tenure of Socage, & in the tenure of Franke almoigne, and in the tenure of Homage auncestrel.

## Escuage.

ESCuage is called in latin Scutagium, that is to say, seruice of shield, And such a tenãt that holdeth his land by Escuage, holdeth by knights seruice. And also it is commõly said, that some hold by a fée of knights seruice, and some by the half fée of knights seruice &c. And it is said, that when the king maketh a voiage royal into Scotland for to subdue the Scots, hee that holdeth by a fée of knights seruice, behoueth to be with the King by forty daies, well and couenably arraied for the war. And

likewise he that holdeth his land by the halfe of a fée by knights seruice, ought to bee with the king by xx. daies, And he that holdeth his land by the fourth part of a fée by knights seruice, him behoueth to be with the king by ten daies: and so after the quantity, he that hath more, to doe more, and he that hath lesse, to do lesse.

But it appeareth by the plées and arguments made in a good plée vpon a writ of Detinue of an Obligation, brought by one Hẽry Gray, An. 7. E. 3. fo. 29. that it néedeth not to him that holdeth by Escuage to go himselfe, if he will find an able person for the warre conuenable arrayed for the warre, to goe with ỹ king, & that séemeth good reason: for it may be, that he that holdeth by such seruice is sicke, in such wise that he may not goe nor ride.

And also an Abbot or any other man of Religion, or a woman sole that holdeth by such seruice, ought not in such case to go in proper person. And Sir William Herle that time chief Iustice of the common place sayd in the sayd plée, that Escuage shall not be graunted, but where the king himselfe goeth in proper person. And so it abode in iudgemẽt of the same plée, if these xl. daies shall be accompted from the day of the Muster of the kings host made by the commons and by the kings commandement: Or els from the day that the king first entreth into Scotland &c. therefore inquire of this matter.

And

And after such voyage into Scotland it is commonly said, that by the authority of Parliamēt, the Escuage shalbe set and put in certaine: that is to say, a certaine summe of money how much euery one ỹ holdeth by a whole fee of knights seruice, which was not in his owne proper person, nor none other for him with the king, shall pay vnto the Lorde, of whom he holdeth his land by escuage. As put case that it was ordained by auctority of parliamēt, that euery one that holdeth by a whole fee by knights seruice, which was not with the king, shal pay to his Lord xl.s. That he that holdeth by the halfe of a fee by a knights seruice, shall pay vnto his Lord but xx.s. and so who more, more, and who lesse, lesse. And some tenants hold, that if Escuage runne by auctority of parliamet to any somme of money, that they shall pay but the halfe of that summe, and some but the fowerth part of that summe. But because the Escuage that they shal pay is not certain, for that it is at no certain what the parliament will assesse the Escuage, they hold by knights seruice. But otherwise it is of Escuage certain, of which shalbe spoken of in the tenure of Socage.

And if a man speake generally of Escuage, it shall be vnderstood by the common speach of Escuage not certain, which is knights seruice: And such Escuage draweth vnto him Homage, and Homage draweth vnto him Fealtie, for fealtie is incident to euery maner of seruice.

seruice, but to the tenure of frankalmoigne, as it shalbe said hereafter in the tenure of frankalmoigne: So as he that holdeth by Escuage holdeth by homage, Fealty, and Escuage.

And it is to be vnderstode, that when Escuage is so sessed by authority of Parliament, euery Lord of whom the land is holden by escuage, shall haue the Escuage so sessed by the Parliament, because it is vnderstode by the Lawe, that at the beginning such tenements were giuen by the Lords to hold by such seruices to defend their Lordes as well as the King, and to set in quiet and rest their Lords against the King of Scots aforesaid. And for that such tenements came first of the Lordes, it is reason that they haue the escuage of their tenants.

And the Lords in such case may distraine for the escuage so assessed, or they may haue the kings writs, directed vnto the Shirfes of the Shires, to leuie such escuage for them, as it appeareth by the Register fol. 88.

But of such tenants that hold of the King by escuage, which were not with the King in Scotland, the King himselfe shall haue the Escuage.

Item in such case aforesaide, where the King maketh a voyage royal into Scotlād, and the Escuage is assessed by parliament, if the Lord distraine his tenant that holdeth of him by seruice of a whole knights fée, for the escuage so assessed &c. And the tenant pleadeth

and

and will averre that he was with the King in Scotland &c. by xl. daies, and the Lord will averre the contrary, it is said that it shall bee tryed by the certification of the Marshall of ỹ Kings host in writting under his seale, which shalbe sent to the Justices.

## Homage, Escuage, and Fealty.

TEnure by homage, escuage, and fealtie, is to hold by knights seruice, and it draweth vnto it ward, mariage, and relefe. For when such a tenant dieth, his heir male being within age of 21. yeers, the Lord shall haue the lād holden of him vnto the age of the heire of 21. yeeres which is called plain or ful age, for that such an heir by the vnderstanding ōf the law, is not able to doe knightes seruice before the age of 21. yeres.

And also if such an heire bee not maried at the time of the death of his auncester, then the Lorde shall haue the warde in marriage of him. But if such a tenaunt die, his heyre female beeing of the age of fowerteene yeeres or more, then the Lord shall not haue the ward neither of the lande nor of the bodie, for that a woman of such age may haue a husbands able to doe knightes seruice. But if such an heire female bee within the age of fowerteene yeere and not married at the time of the death of her auncester, then the Lord shall haue the

wards

ſwarde of the lands holden of him, till the age of ſuch an heire female of 16. yeres. For that it is giuen by the ſtatute of weſtm. 1. cap. 12. that by two yeeres next following the ſaid 14. yeeres, the Lorde may tender a conuenient mariage without diſparaging of ſuch an heire female. And if the lord do not tender her ſuch mariage within the ſaid two yeeres, then ſhee at the end of the ſaide two yeeres may enter and put out the lord. But if ſuch an heire female be maried within the age of 14. yeres in the life of the auncеſter, and the auncеſter die, ſhe being within the age of 14. yeres, the Lord ſhall haue but the ward of the lande till an end of 14. yeres of age of ſuch an heire female. And then her huſband and ſhe may enter into the land and put out the Lord, for this is out of the caſe of the ſtatute. Inſomuch that the lord cannot tender mariage to her that is maried &c. For before the ſaid ſtatute of weſtminſt. 1. ſuch iſſue female that was within age of 14. yeeres at the time of the death of her anceſter, and after that ſhee had accompliſhed the age of fourteene yeeres without anie tender of marryage to her by the Lorde, ſuch an heire female then might enter into the lande and put out the Lorde, as appeareth by the rehearſall, and by the wordes of the ſame eſtatute. So that the ſayde Statute was made in ſuch caſe all for the aduauntage of the Lorde as it ſeemeth. But yet that at all times it is underſtode by the wordes of the

ſame

same estatute, that the Lorde shall not haue the two yere after the xiiij. yere, as it is afore-sayd.

And note well, that the full age of the male and female after the common speeche is said the age of xxi. And the age of discretion is sayd the age of xiiij. yeres, for a childe at such age, which is wedded within such age to a woman, may agree to the mariage or disagree.

And if the warden in chiualry marrie once his ward within the age of xiiij. yere, and after the age of xiiij. yeres he disagreeth to the mariage. It is said by some folke that the childe is not holden by the Lawe to be married another time by his Warden, for that the Warden had once the mariage of him, and therefore he was out of his ward as concerning the ward of his bodie. And when he had once the mariage of him, and therefore was out of his ward, he shall no more haue the marriage of him. In the same maner it is if the Warden marrie him, and the wife die, the child being within age of xiiij. yeeres, or xxi. yeres. And that the child may disagree to such mariage when hecõmeth to thage of xiiij. yere, it is proued by the wordes of the Statute of Mert. cap. 6. that saith thus: De dominis qui maritauerint illos quos habent in custodia sua villanis, & aliis sicut burgensibus vbi disparagent, si tales homines fuerint infra xiiij. annos, et talis ætatis quod matrimonio cõsentire non pos-

possint, tunc si parentes illius conquerent, dominus ille amittat custodiam illam vsque ad ætatem hæredis. Et omne commodum qđ inde recepť fuerit convertatur in commodum heredis infra etatē existentis secundum dispositionem parentum, propter dedecus impositum. Si autē fuerit 14. annorum & vltra quod consentire poterit, & tali maritagio consenserit, nulla sequatur pena. And so it is proued by the same statut that no disparagement shalbe, but wher that he that hath the ward marieth him within the age of 14. yeres.

Also it hath bin a question how these words should be vnderstood. Si parentes conquerantur &c. And it seemeth vnto some that considering the statute of Magna charta cap. 6. that willeth that hæredes maritentur absque disparagatione &c. vpon which the said Statute of Merton vpon this poynt is grounded, as it seemeth, and in so much that it was neuer seene that any action was brought vpon the statute of Merton for such disparaging against the Wardein, and if any action may be taken vpon such matter, it shalbe taken by common presumption before this time, or at some time to be put in vre, that these wordes shall bee vnderstode in such manner. Si parentes conquerantur. i. Si parentes inter se lamentantur, which is as much to say, that if the Cosins of such a childe haue cause to make lamentation & complaint amongst them for the shame done to their cosin so disparaged

which

which is in a maner a shame to them all, then may the next cosin to whom the heritage may not discend enter, and put out the warden in Chiualry. And if he will not, another cosin of the childes may doe it, and hee to take the issues and profites vnto the vse of the child, and of that yeeld the childe account when he commeth vnto his full age: Or els the child within age may enter himselfe, & put out the Warden &c. Sed quære de hoc.

Also there are many other diuers disparagings, which be not specified in the same statute As if the heire that is in ward be married vnto one that hath but one foote, or one hande, or else deformed, or lame, or hauing an horrible disease, or else a great and continuall infirmity: Or if the heire male be maried to a woman passed childe bearing. And many other causes of disparaging there bee, but inquire for them, for it is good matter to learne. And of heires males that bee within age of 21. yeeres after the death of their auncesters vnmaried: In such case the Lorde shall haue the mariage of such an heire, and haue space and time to tender to him conuenable mariage without disparaging within the same time of 21. yeeres.

And it is to wit, that the heire in such case may chuse if hee will bee married or no. But if the Lorde which is called Wardeyne in Chiualrye, tender a conuenable marryage to suche an heire within the age

age of xxi. yeeres, without diſparaging, and the heire refuſe, and marry not himſelfe within the ſame age: Then the ſaid warden ſhall haue the value of the marriage of ſuch an heire. But if ſuch an heire male marrie himſelfe within the age of xxi. yeeres, againſt the will of the warden in chiualrie, then ſhall the warden haue double the value of the Marriage, by force of the Statute of Merton aforeſaid, as in the ſame Statute is more fully compriſed.

And diuers tenants holde of their Lordes by knights ſeruice, & yet they hold not by Eſcuage, nor pay no eſcuage, as they that holde their lands by Caſtleward: that is to ſay, to keepe a Tower of a Caſtle, or a gaole, or ſome other place by reaſonable warning, whē their Lords heare tell that enemies will come, or be come into England. And in many other caſes a man may hold by knightes ſeruice, and yet he holdeth not by eſcuage, nor payeth no Eſcuage, as ſhalbe ſaid in the tenure of Graund Seriantie. But in all caſes where a man holdeth by knights ſeruice, ſuch ſeruices draw to the Lord, ward, and Mariage.

And if a tenant that holdeth of his Lord by ſeruice of an whole knights fée dye, his heire being of full age of xxi. yeeres, his heire ſhall pay vnto the Lord C.s. for a reliefe. And he that holdeth by the halfe fée ſhal pay L.s.

Alſo if a man hold his lande of his Lorde by the ſeruice of two knightes fées, then the heire

heire at full age at the time of the death of his auncestor, shall pay to his Lord ten pound for relieke.

Also if there be graundfather, mother, and sonne, and the mother dieth liuing the father of the sonne, and after the grandfather which held his land by knights seruice dieth seysed, and the land discendeth to the sonne of the mother, as heire to the graundfather, which is within age: In such case the lord shall haue the ward of the land, but not the warde of the heire: For that none shalbe in ward of his bodie liuing his father, because the father during his life shal haue the mariage of his heire apparant, and not the Lord. Otherwise it is, if the father bee dead liuing the mother, where the land holden in Chiualrie discendeth to the sonne on the fathers side &c.

Also if a man bee seysed of lande which is holden by knights seruice, and maketh a feffement in fee to his vse, and dyeth seised of the vse, his heire within age, and no will by him declared, the Lord shall haue a writ of Right. of the body and the land, like as if the tenaunt had died seised of the demesne. And if the heire be of full age at the death of his auncestor, in such a case he shall pay relieke, like as if he had bin seised of a demesne, and that is by the statute of An. 4. H. 7 cap. 17.

Also there is a warden in right in chiualry, and a warden in deede in chiualry. warden in right in chiualry, is where the Lord because

of his Lordship is seised of the warde of the land, and the heire vt supra. Warden in deede in chiualry, is where the Lord in such case after his seising graunteth by deede, or without deede, the ward of the lande, or of the heire, or of both to another man, by force of which grãt the grantee is in possession, then is the grantee called wardein in deede &c.

## Tenure in Socage.

TEnure in Socage, is where the tenaunt holdeth of his Lorde the tenauncie by certaine seruice for all manner of seruice, so that the seruice be not knights seruice: As where a man holdeth his land of his Lord by fealty and certaine rent for all maner of seruice: Or els where a man holdeth his land by homage, fealty, and certaine rent, for all manner of seruices, for homage by it selfe maketh not knights seruice.

Also a man may hold of his Lord onely by fealty, and such tenure is Tenure in Socage, for euery tenure that is not tenure in Chiualrie, is tenure in Socage. And it is said, that the cause wherefore such tenure is said, and hath the name of tenure in Socage, is this, Quia hoc Socag. idem est, quod seruic. Socæ, Et hæc Soca Socæ, idem est quod Caruca. s. one Soke, or one plough land.

And in olde time before the limitation of

of time out of mind, great parte of the tenants that helde of their Lordes by Socage, ought to come with their Ploughes euery of the sayd tenants by certaine dates in the yere, to eyre and sowe the Lordes lands of his owne graines: But for that such works were done for the liuelode and sustenance of their Lords, they were acquited agaynst their Lorde of all maner of seruices. And for this that such seruice was done with their Ploughes, such tenure was called tenure in Socage. And after that such seruices were chaunged into diuers other manner seruices, by consent of the tenants, and by the desire of their Lords, that is to say, into a yerely rent &c. But yet the name of Socage abideth, and in diuers places tenauntes yet doe such seruice with their Ploughes vnto their Lorde, so that all manner of seruices that bee not Tenures in Knightes seruice, bee called Tenures in Socage.

Also if a man hold of his Lord by Escuage certaine, That is to say in such fourme, that when Escuage runneth and is assessed by the Parliament to a more summe, or to a lesse summe, that the tenant shall pay to the Lorde but halfe a marke for escuage, & neither more ne lesse to howe great summe or little summe that the escuage runneth, in this case because ỹ escuage is certaine before that any escuage is assessed &c. Such tenure is tenure in Socage and not knights seruice. But where the

ſumme that the tenant ſhal pay for eſcuage, is not certaine, that is to ſay, where it may bee ſ the ſumme that the tenãt ſhall pay for eſcuage may be at one time more and another leſſe, after that it is aſſeſſed &c. then ſuch tenure is tenure by knights ſeruice.

Alſo if a man hold his land for to pay certeine rent to his Lord for caſtleward, ſuch tenure is tenure in Socage. But where the tenant himſelfe ought by him or by any other to make caſtleward, ſuch is tenure by knights ſeruice.

Alſo in al caſes where the tenaunt holdeth of his Lorde to pay to him any certaine rent, that rent is called rent ſeruice.

Alſo in ſuch tenures in ſocage, if the tenãt haue iſſue and die, his iſſue being within the age of 14. yeres, then the next friende of that heire to whom the heritage may not diſcende ſhall haue the ward of the land, and of the heir vnto the age of the heire of 14. yeres, and ſuch warden is called wardein in Socage. For if land diſcend to the heire by the fathers ſide, then the mother, or ſome other nigh Coſin of the mothers ſide ſhall haue the ward. And if land diſcend to the heire by the mothers ſide, then the father or the next friend of the fathers ſide ſhall haue the warde of ſuch landes or tenements. And when the heire commeth to the age of 14. yeres cõplete, her may enter and put out his warden in Socage, and occupie the land himſelfe if he will. And ſuch warden in

Socage shall take no issues or profits of such lands or tenements to his owne vse, but only to the vse and profite of the heire, and of that shall yelde account when it pleaseth the heire after that the heire hath accomplished the age of fourteene yeeres. But such a warden vpon such accompt shall haue allowance, of all his reasonable costes and expences of all things. And if such a warden marrie the heire within age of fourteene yere, hee shall make accompt to the heire or to his executors of the value of the marriage, though he toke nothing for the value of the marriage, for that it shall bee rected his owne follie, that hee woulde marry him without taking the value of the mariage without hee marrye him to such a marriage that is worth in value as much as the marryage of the heire &c. Also if any other man that is not a nigh friend &c. occupie the lands and tenements of the heire as warden in Socage, hee shal bee compelled to yelde accompt vnto the heire, as well as his nexte friende, For it is no plee for him in a writ of accompt to say that he is not his nigh friende &c. But hee shall aunswere whether hee occuppeth the landes or tenementes as warden in Socage or not. But inquire if after that the heire haue accomplished the age of fowerteene yere, and the warden in socage continually occupieth the lande till the heyre commeth to full age of 21. yeres: If the heire at his full age shall haue an action of Accompt against the

ſumme that the tenant ſhal pay for eſcuage, is not certaine, that is to ſay, where it may be, the ſumme that the tenãt ſhall pay for eſcuage may be at one time more and another leſſe, after that it is aſſeſſed &c. then ſuch tenure is tenure by knights ſeruice.

Alſo if a man hold his land for to pay certaine rent to his Lord for caſtleward, ſuch tenure is tenure in Socage. But where the tenant himſelfe ought by him or by any other to make caſtleward, ſuch is tenure by knights ſeruice.

Alſo in al caſes where the tenaunt holdeth of his Lorde to pay to him any certaine rent, that rent is called rent ſeruice.

Alſo in ſuch tenures in ſocage, if the tenãt haue iſſue and die, his iſſue being within the age of 14. yeres, then the next friende of that heire to whom the heritage may not diſcende ſhall haue the ward of the land, and of the heir vnto the age of the heire of 14. yeres, and ſuch warden is called wardein in Socage. For if land diſcend to the heire by the fathers ſide, then the mother, or ſome other nigh Coſin of the mothers ſide ſhall haue the ward. And if land diſcend to the heire by the mothers ſide, then the father or the next friend of the fathers ſide ſhall haue the warde of ſuch landes or tenements. And when the heire commeth to the age of 14. yeres cõplete, hee may enter and put out his warden in Socage, and occupie the land himſelfe if he will. And ſuch warden in

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Socage shall take no issues or profits of such lands or tenements to his owne vse, but only to the vse and profite of the heire, and of that shall yelde account when it pleaseth the heire after that the heire hath accomplished the age of fourteene yeres. But such a warden upon such accompt shall haue allowance, of all his reasonable costes and expences of all things. And if such a warden marrie the heire within age of fourteene yere, hee shall make accompt to the heire or to his executors of the value of the marriage, though he take nothing for the value of the marriage, for that it shall be rected his owne folie, that hee would marry him without taking the value of the mariage without hee marrye him to such a marriage that is worth in value as much as the marryage of the heire &c. Also if any other man that is not a nigh friend &c. occupie the lands and tenements of the heire as warden in Socage, hee shal bee compelled to yelde accompt vnto the heire, as well as his nexte friende, For it is no plee for him in a writ of accompt to say that he is not his nigh friende &c. But hee shall aunswere whether hee occuppeth the landes or tenementes as warden in Socage or not. But inquire if after that the heire haue accomplished the age of fowerteene yere, and the warden in socage continually occupieth the lande till the heyre commeth to full age of 21. yeres: If the heire at his full age shall haue an action of Accompt against the

warden for the time that he hath occupied after the said fowerteene yéeres, as against his warden in socage, or against him as against his bailife.

Also if warden in chiualry make his executors, and dye, the heire being within age &c. The executors shal haue the ward, during the nonage. But if the warden in Socage make executors and die, the heire being within the age of fowerteene yéeres, his executours shall not haue the warde, but another nigh friend to whom the heritage may not discend, shall haue the warde. And the cause of diuersitie is, for that the warden in chiualry hath the warde to his proper vse, & the wardein in Socage hath not the ward to his owne vse, but to the vse of the heire. And in such case, where the warden in socage dyeth before any such accompt made by him, the heire is of that without remedie, for that no writ of accompt lyeth against the executors, but onely for the King.

Also the Lorde of whome the lande is holden in Socage after the death of his tenant, shall haue relefe in such fourme. If the tenaunt holde by Fealty, and certaine rent to paye yéerely &c. If the termes of payment bée to pay by two termes of the yéere, or by fower termes of the yéere, the Lorde shall haue of the heire of his tenaunt, as much as the rent amounteth that hee shoulde pay by yéere. As if the tenaunt holde of the

Lord

Lord by fealty, and x. shillings of rent, payable at certaine termes of the yeare, then the heire shall pay to the Lorde x.s. for relieſe aboue theſe ten shillings that he shal pay for the rent. Loke more in the Statute of Anno 19. H.7.ca.15.

And in such case after the death of the tenaunt, such relieſe is due to the Lord incontinent, of what age soeuer the heire be, for that such a Lord may not haue the ward of the bodie nor the land of the heire. And the Lorde in such case ought not to abide the payment of his relieſe, after the termes and dayes of payment of the rent, but he ought to haue his relieſe incontinent: and therefore he may incõtinent distraine after the death of his tenaunt for the relieſe.

In the same maner it is, where a tenant holdeth of his Lord by fealty, and by a pounde of Comin, or a pound of Pepper by the yére, and the tenaunt die, the Lord shall haue for his relieſe a pound of Comin, or a pound of Pepper.

In the same manner is it, where the tenant holdeth to pay by the yére a certain number of Capons or Hens, or a paire of Gloues, or certaine bushels of wheat, and such other maner thing. But in some case the Lord ought to abide to distrain for his relief til a certain time. As if the tenant hold of his Lord by a Roſe, or by a bushell of Roſes, to pay at the feaſte of S. Iohn Baptiſt, If such a tenaunt die in winter, then the Lorde may not distraine for

his reliefe &c. vntil the time that the Rose by the course of the yeere may haue their growings &c. Et sic de similibus.

Also if ame peraduenture will aske why a man may not holde of his Lord by fealty only for all maner of seruices, insomuch, that when the tenant shal make his fealty, he shal sweare to his Lord that he shall do all seruices due, & when hee hath made fealty in such case, there is none other seruice due: To this it may be said, that where the tenant holdeth his land of his Lorde, it behoueth that he ought to doe to his lord some maner of seruice, for if the tenant nor his heires ought to do no maner of seruice to his Lord, nor to his heire, then by long time continued it should be out of remembrance of whom the land was holden, of the Lord, or of his heire, or not, & then more ofte & more soner will men say, that the land is not holden of the Lord nor of his heires, then otherwise: and vpon this the Lord shall lose his Escheate of his land, or percase other forfaiture or profite that he might haue of the land: So it is reason that the Lord & his heires haue some seruice done vnto him, for a proof, & a witnes that the land is holden of them, and because fealty is incident to al maner tenures, except tenure in frankalmoigne, as shall be said in Frankalmoigne, & because that the Lord wil not at the beginning of the tenure haue any other seruices but fealty, it is reason that a mā may hold of his Lord only by fealty, and when her hath made

made his fealty he hath done all his seruice.

Also if a man let to another for terme of life certaine landes or tenements, without speaking of any thing to yeld to the lessor, yet he shal do to ꝯ lessor fealty, for that he holdeth of him. And if a lease bee made to a man for terme of yeres, it is said the lessée shall doe to the lessor fealty, for that he holdeth of him. And this is proued well by the words in a writ of waste, when the lessour hath cause to bring a writ of wast against him, the which writ shal say, that the lessée holdeth the tenementes of the lessor for terme of yeres: so that writ proueth a tenure betweene them &c. But he that is tenãt at will after the course of the Common lawe, shal not make fealty, because he hath no maner of a sure estate. But otherwise it is of tenant after the custome of the manor, because that he is bound to do fealty to his Lord for two causes: One is, because of custome, the other is, because that he taketh his estate in such forme to doe fealty.

## Franke almoigne.

TEnaunt in Franke almoigne is, where an abbot or priour, or another man of Religion, or of holy Church, holdeth of his Lord in Franke almoigne: that is to say in Latin, in liberam Eleemosynam, that is to say, in free almes. And such tenure began first in old time when a man in old time was seyled of landes or tenements in his demesne as of fée, and of the

The same land enfeoffed an Abbot and his Co-uent, or Prior and his Couent, to haue and to holde of them and their successors in pure and perpetual almes, or in frankalmoigne, or by such wordes, to holde of the graunter, or of the lessor and his heirs in free almes: In such case the tenements were holden in frankealmoigne. And in the same manner it is, where the landes or tenementes were graunted in olde time to a Deane and Chapter, and to their successors, or to a Parson of a Churche, and to his successors, or to any other man of holy Churche, and to his successours in free almes, if he had capacitie to take such grants or feoffements &c. And such as holde in free almes, be bound of right afore God to do Diriges, prayers, and Masses, and other diuine seruices for the soules of the grantors or feoffors, or for the soules of their heires which be dead, and for the prosperity & good life of them that be aliue.

And for this they doe at no time no manner of fealty vnto their Lordes, for that such diuine seruice is better for them before GOD, then any dooing of Fealty. And also these wordes, free almes, or frankalmoigne, exclude the Lord to haue any worldly or temporal seruice, but onely to haue diuine and speciall seruice to be done for him &c. And if such that holde their tenements in free almes, or frankalmoigne will not, or faile to doe such diuine seruice as is saide, the Lorde may not

distraine

distraine them for the seruices vndone &c. because it is not set in certaine, what seruice they ought to doe: but the Lord may of them complaine to their Ordinary, praying him that hee will set punishment and correction of that. And also to prouide & see that such negligence be no more done, and the Ordinarie of right ought to do that &c.

But where an abbot or a Prior holdeth of his Lord by certaine diuine seruice in certein to be done, as for to sing a Masse euerie friday in the weeke, for the soules &c. or euery yere at such a day to sing Placebo & Dirige &c. or to finde a Chaplein to sing masse &c. or to distribute in almes to an hundred poore men, an hundred pence at such a day, in such case if such diuine seruice be not done, the lord may distraine &c. for that this diuine seruice is in certain by their tenure what the abbot or the prior ought to do. And in such case the Lord shal haue the fealty &c. as it seemeth.

And such tenure is not saide tenure in free almes, but it is sayde tenure by diuine seruice, for in tenure in free almes, or franke almoigne, no mention is made of any manner certaine seruice, for none may holde in free almes or frank almoigne if there be expressed any maner certein seruice that he ought to do.

And if it bee demaunded if the tenaunt in frankmariage shall doe Fealty to the donour or to his heires before the fowerth degree be passed &c. It seemeth that yea, for hee is not

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like as to this intent to a tenant in free almes or frank almoigne, for the tenant in free almes shal do (because of his tenure) diuine seruice for the Lord as it is afore said, and that hee is charged to do by the law of holy Church, and for that he is excused and discharged of fealty. But tenaunt in franke marriage doth not by his tenure such seruice.

And if he do not to his Lord fealty, then he doth not to his Lord any manner of seruice neither spirituall nor temporall, which should be an inconuenience and against reason, that a man should haue estate of inheritaunce of an other, and yet the Lord shal haue no maner of seruice of him as it seemeth, and so it seemeth that he shall doe fealty to his Lorde vntill the fourth degree be past &c. And when he hath done fealty, hee hath done all his seruice. And if an Abbot holde of his Lord in free almes, & the abbot and his conent vnder their common seale alien the same lande to a seculer man in fee simple, in this case the seculer man shall do fealty to the Lord, for that he may not holde of his Lord in free almes, for if the Lord ought not to haue of him fealty, then hee shall haue of him no manner of seruice which should bee an inconuenience where he is Lorde, and the tenements are holden of him.

Also if a man grant at this day to an abbot or to a Prior, landes or tenementes in free almes or franke almoigne, these wordes free almes or franke almoigne bee voide, for that

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it is ordained by the Statute which is called Quia emptores terrarum, which statute was made Anno 18. Regis E. primi. That no man may alien or grant lands or tenements in fee simple to hold of himselfe, so that if a man bee seised of certaine land or tenements which he holdeth of his Lord by knights seruice and at this day he graunteth the same land to an abbot &c. in free almes or franke almoigne, the Abbot shall hold immediately the same tenements by knights seruice of the Lorde of his grauntor, because of the same estatute: so that no man may holde in free almes or in franke almoigne, but if it be by title of prescription, or by force of a graunt made to some of his predecessors before the same estatute, But the King may giue landes or tenementes in fee simple to hold in free almes or frankalmoigne or by other seruice, for he is out of the case of the statute, and note well that no man may holde landes or tenements in free almes, but of the grantor or his heires, and that for the priuitie of the gifte, and therefore it is saide, that if there be Lord mesne and tenant, & the tenant is an Abbot that holdeth of his mesne in franke almoigne, if the mesne die without heire, then the mesnaltie shall come by eschete to the said Lord aboue, and the abbot tē shal hold of him immediately onely by fealty, & shal do him fealty, for that he may not hold of him in franke almoigne &c.

And note well, where that such a man of

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religion holdeth his lands of his Lord in frē almes &c. his Lord is bound by the law to acquite him of euery manner of seruice that anie Lord aboue him will demaund or aske of the same tenants. And if he acquite him not but suffer him to be distrained &c. thē he shal haue against his Lord a writ of Mesne, and recouer his damages and costes of his suit.

## Homage auncestrel.

TEnure by homage auncestrel is, where a tenant holdeth his land of his Lord by homage, and the same tenant and his auncestors whose heire hee is, haue held the same lande of the said Lord and of his auncestors, whose heire the Lord is, from time out of mind by homage, & haue done homage vnto him which is called Homage auncestrel because of the continuance which hath bēen by title of prescription in the tenancy, in the blood of the tenant, & also in the Lordship in the blood of the Lord. And such seruice by homage auncestrel draweth to it warranty, if the Lord that is alive hath receiued homage of such tenaunt, hee ought to warrant his tenant when he is impleaded of the lands holden of him by homage auncestrel. And all such seruice by homage auncestrel draweth to it acquitaunce, that is to say, the Lorde ought to acquite his tenaunt against all other Lords aboue him of euerie manner of seruice. And it is said that if such tenaunt bee impleded by a Præcipe quod red:

reddar &c. and he voucheth his Lord to warrantie, which commeth in by processe, and asketh of the tenant what he hath to bind him to warrantie, and he sheweth how he and his auncesters, whose heire he is, haue holden the lande of the vouchée and of his auncesters, whose heire he is, by Homage from time out of mind: if the Lord which is vouched receiued none homage of the tenaunt, nor of any of his auncesters, the Lord then if he will, may disclaime in the Lordship, and so put out his tenant of his warrantie. But if the Lorde which is vouched hath receiued homage of the tenaunt, or of any of his auncesters, then may he not disclaime, but he is bound by the law to warrant the tenaunt, and then if the tenaunt leese the land in default of the vouchée, he shal recouer in value against the vouchée of the lands or tenementes that the vouchée had at the time of the voucher, or any time after.

And it is to wit, that in euery case where the Lorde may disclaime in his Lordship by the law, in Court of Record, and of that will disclaime, his seigniory is extinct, and the tenant shal hold of the Lord next aboue his lord which is disclaimeth. But if an Abbot or Priour be vouched by force of homage auncestrel &c. though he haue neuer taken homage &c. yet he cannot disclaime in this case, nor in none other case, for they cannot deuest that thing in fée, which hath béene vested in their house, Pasch. 10. E. 4.

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Also if a man that holdeth his land by Homage auncestrel alieneth his land to another in fée, the alienée shall do homage to his Lord. But hee holdeth not of his Lorde by homage auncestrel, for that the tenancy was not continued in the blood of the auncestors of the alienée, nor the alienée shall neuer haue the warranty of his land of his lorde, for that the continuance of the tenancie in the tenant and in his blood by the alienation is discontinued. And so see, that the tenaunt that holdeth his land by homage auncestrel of the Lorde, and such a tenaunt alieneth in fée, though that hee take estate of the alienée againe in fée, he holdeth the land by homage, but not by homage auncestrel.

Also it is said, that if a man hold his land of his Lord by homage and fealty, and he hath made homage and fealty to his Lord, and the Lord hath issue a sonne and dyeth, and the Lordship discendeth to his sonne: In this case the tenaunt which did homage to the father, shall not do homage to his sonne, for that when a tenant hath made once homage to his Lord, he is excused for term of his life to make homage to any other heire of the Lord: But yet he shall do fealty to the sonne and heire of his Lord, though that he made fealtie to his father.

Also if the Lorde after the homage to him made by his tenant, graunt the seruice of his tenant by deede vnto another in fée, and the

tenant attorneth &c. the tenaunt shall not bee compelled to doe homage, but he shal do fealty, though hee did fealty before to the graunter, for Fealty is incident to euery attornement when the Lordship is granted. But if a man bee seised of a Mannor, and another man holdeth his land of him as of a Manour aforesaid by homage, the which hath done homage to his Lord which is seised of the manor, if after that a stranger bring a Præcipe quod reddat against the Lord of the manor, and recouereth the manour against him, and sueth execution &c. in this case the tenant shal once againe do homage to him that recouereth the manor, for that the state of him which receiued homage before is defeated by the recouery. And it shal not lie in the mouth of the tenant to falsifie or defeate the recouery which was against his Lorde. And so see the diuersity in this case, where a man commeth to his Lordship by recouery, and where hee commeth by discent, or graunt of the seigniory.

And if a man tenaunt which ought by his tenure to doe homage to his Lord, come to his Lord and say to him, Sir, I owe to do vnto you homage for the tenements that I hold of you, and I am ready to do you homage for the same tenemẽts, for the which I pray you that yée will now receiue it, and if the Lorde then refuse to receiue it, then after such refusall the Lord may not distrayne the tenant for the homage, before that the Lord require the tenant

to do homage, and the tenant refuse to doe it.

Also a man may holde his land by homage auncestrel, and by escuage, or by other knights seruice, aswell as he might holde his lande by homage auncestrel in Socage.

## Graund Serieanty.

TEnant by Graund Serieanty is, where a man holdeth his lands or tenements of our soueraign Lord the king, by the seruice which he ought to do in his own proper person, as to beare the kings Banner or his Speare, or to lead his Host, or to be his Marshal, or to beare his sword before him at his Coronation, or to be his Sewer at his Coronation, or his Carner, or Butler, or to be one of his Chamberlaines of his receit of his Eschequer, or to do such seruices &c. And the cause wherfore such seruice is called Graund Serieaunty, is for that it is more honourable, & worshipfull, and digne, then is the seruice of the tenure by Escuage, for he that holdeth by escuage, is not limitted by his tenure to doe any more especiall seruice, then any other that holdeth by escuage ought to do. But he that holdeth by Graund Serieaunty, ought to do some especial seruice to the king, that hee that holdeth by Escuage ought not to do.

Also if the tenant which holdeth by escuage die, his heire being of full age, if hee holde by a knights fée, the heire shal pay but an C.s. for his

his relieſe, as it is ordained by the Statute of Magna char.cap.2. But he that holdeth of the king by Graund ſerieanty and dieth his heire being of full age, ſhal pay vnto the king for his relieſe, the value of his lands or tenements by the yere, beſides the charges & repriſes which hee holdeth of the king by Graund ſerieantie. And it is to wit, that ſerieanty in latin is ſeruitium, & of Magna ſerieantia is Magnum ſeruitium, that is to ſay, a great ſeruice.

Alſo thoſe which holde by eſcuage ought to do their ſeruice out of the Realm, but they that holde by graund ſerieaunty for the moſt parte ought to do their ſeruice within the realme.

And it is ſaid that in the marches of Scotland ſome holde of the King by cornage, that is to ſaye, to blowe an horne for to warne the men of the countrey &c. when they heare that the Scots or other enemies will come to enter into England &c. which ſeruice is graund ſerieaunty &c. but if any tenant hold of any other Lord then of the King by ſuch ſeruice of cornage, that is not graund ſerieaunty, but it is knights ſeruice, and draweth to it ward, mariage, and relieſe, for none may hold by graund ſerieanty but of the king onely.

Alſo a man may ſée in the 11. yere of Henry the 4. fol. 27. that Cokein then being Chiefe baron of the Eſchequer came into the commō place, bringing with him a copie of a Record in theſe words. Talis tenet tantam terram de domino Rege per Seriantiam ad inueniendum

vnum hominem ad guerram intra quatuor maria &c. That is to say, such a man holdeth so much land of our Soueraigne Lord the King by Serieanty to finde one man appointed for the warre within the fower seas, & he demanded whether it was graund serieanty or petty serieanty, and Hank. then saide that it was graund serieanty, for that it was seruice to be done by the bodie of a man, & if that he may not finde a man to do seruice for him, he must do it himselfe. To whome the other Justices assented, Cokein then said, the tenant in this case shall pay relefe to the value of the lande by yere, to the which was none answere, and note that al they that hold of the king by grād serieantie, hold of the king by knights seruice, & the king of that shall haue ward, mariage, & relefe, but the king shall not haue of them escuage, if they hold not by escuage.

## Petie Serieantie.

TEnaunt by petit Serieauntie is, where a man holdeth his lande of our Soueraigne Lord the King, to yelde vnto him yerely a Bowe, a Swoorde, a Dagger, or a Knife, or a spere, or a paire of gloues of maile, or a paire of spurs gilt, or an arrow, or diuers arrowes, or to yelde such other small things touching the warre, and such seruice is but Socage in effect, for that that the tenaunt by his tenure ought not to goe nor to doe anie thing in his owne

owne proper person touching the warr. But to yelde and pay yearely certaine things vnto the King, as a man ought to pay a rent. And note that no man holdeth lande by graunde serieantie, nor by Petie serieantie, but of the King.

## Burgage.

TEnure in Burgage is where an auncient Borough is, of the which the king is lord, and they that haue tenements within the borough hold of the King their tenements, that euery tenant for his tenement ought to pay to the king a certeine rent by yeere &c. And such tenure is but tenure in Socage, and the same maner is where an other Lorde spirituall or temporal is Lord of such a Borough, and the tenants of the tenements in such a Borough hold of their Lorde to pay eche of them yerely an annuel rent, and it is called tenure in burgage, for that the tenementes within the Borough be holden of the Lorde of the Borough by certaine rent &c. And it is to wit, that the auncient townes called Boroughes, bee the most auncient & eldest Towns that be within England, for the townes that now be Cities or counties, in olde time were boroughes and called boroughes, for of such olde townes called boroughs, came these Burgesses of the Parliament to the parliament when the king hath summoned his parliament.

Also for the greater part of such boroughs haue diuers customes and vsages which bée not had in other Townes, for some borough hath such a custome, that if a man haue issue many sonnes and dieth, the yongest sonne shal inherite all the tenements which were his fathers within the same borough as heires vnto his father, by force of the custome, the which is called borough English.

Also in some boroughs by the custome, the wife shal haue for her dower all the tenements which were her husbands.

Also in some borough by the custome, a man may deuise by his testament his lands and tenements which hee hath in fée simple within the same borough at the time of his death, & by force of such deuise, he to whom such deuise is made after the death of the deuisour, may enter into the tenements to him deuised, to haue and to hold to him after the fourme and effect of the deuise without any liuerie of seisin therof to be made to him.

Also though a man may not graunt nor giue his tenementes to his wife during the couerture, for that that his wife and he be but one person in the law, yet by such custome hée may deuise by his testament his tenementes to his wife to haue and to holde to her in fée simple, or in fée taile, or for terme of life, or yéeres, for that such deuise taketh no effect, but after the death of the deuisor. And if a man at diuers times make diuers testamentes and

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diuers deuises &c. yet the last deuise and will made by him, shall stand and abide.

Also by such custome a man may deuise by his Testament, that his executors may alien and sell the tenements that he hath in fee simple, for a certaine summe, to distribute for the soule: in this case though the deuisor die seised of the tenements, and the tenements discend vnto his heire; yet the executors after the death of the testatour maie sell the tenements so deuised, and put out the heire, and thereof make a feoffement, alienation, & estate by deed or without deed, to them to whom the sale is made vnto.

And so may ye see a case, where a man may make a lawfull estate, and yet he hath nought in the tenemēts at the time of the estate made: And the cause is for that, that the custome and vsage is such, Quia consuetudo ex certa causa rationabili vsitat', prouat communē legem: For a custome vsed vpon a certain reasonable cause, proueth the common Law.

And note well, no custome is to be allowed, but such custome as hath bēn vsed by title of prescription, that is to say, from time whereof is no mind. But diuers opinions haue bin of time out of minde, and of title of prescription, which is al one in the law, for some men haue said, that the time of mind should bee said for time of limitation in a writ of right, that is to say from the time of king Richard the first after the Conquest, as is giuen by the statute of

Westminster the first, for that a writ of Right is the most highest writte in his nature that may be. And in such a writ a man may recouer his right of the possession of his auncesters, of the most ancient time that any man may by any writ by the law. And in so much that it is giuen by the saide estatute, that in such a writ none shall bee heard to aske of the seisin of his auncestors of more longer time, then of the time of King Richard afforesayde, therefore this is proued, that continuance of possession, or other customes and vsages vsed after the same time is title of prescription, and this is certain. And other haue said, that seysin and continuance after the limitation &c. is a title of prescription, as is aforesaid, and by the cause aforesaid. But they haue sayd that there is also another title of prescription that was at the common law, before any estatute of limitation of writs &c. and that it was where a Custome or vsage, or other thing had been vsed, for time whereof mind of man runneth not to the contrarie: And they haue saide that this is prowed by the pleading, where a man will pleade a title of prescription of custome &c. he shal say that such custome hath bin vsed from time wherof the memorie of men runneth not to the contrarie, that is as much to say, when such a matter is pleded, that no man then a liue hath heard one praike to the contrarie, nor hath no knowledge to the contrarie, & in so much that

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such title of prescription was at the Common lawe, and not put out by any estatute, Ergo it abideth as it was at the common Lawe, and the sooner, insomuch that the saide limitation of a writ of Right &c. is of so long time passed, Ideo quære de hoc. And many other customs and vsages haue such ancient boroughs.

Also euery Borough is a towne, but not the contrary. More shalbe sayd of Customes in the tenure of Villenage.

## Villenage.

TEnure in villenage is most properly when a Villein holdeth of his Lord (to whom he is villein) certaine landes and tenements after the custome and manor, or els at the will of his Lord, and to do his villein seruice, as to beare, bring, and carie out the dung and filth of the Lord vnto the land of his Lord, there to lay it, cast it, & spread it abroad vpon the land, and to doe such other manner of seruice. And some free tenants hold their tenements after the custome of certain manors by such seruice, and their tenure is called tenure in villenage, and yet they be no villeines, for no land holden by villenage, or villeine landes, or any custome rising of the lande, shall neuer make a free man villein: But a villein may make free land to be villein land vnto his Lord. As if a villeine purchase lande in fee simple, or in fee taile, the Lord of the villein may enter into the land, and put out the villein and his heires for euer,

euer, & after the Lord (if he will) may let the same land to the villeine, to hold in villenage.

Also if a feoffement be made to a certaine person or persons in fee, to the vse of a villein, or if a villein, or any other persons be enfeoffed to the vse of a villeine, what estate soeuer the villeine hath in the vse, in fee taile, for terme of life, or yeeres, the Lorde of the villeine may enter in all those landes and tenementes likewise as if the villeine had been alone seysed of the demesne: And that is by the Statute of An. 19. H. 7. cap. 15. But if a free man will take any lands or tenements of his Lorde by such villeine seruice, that is to say, to pay a fine to his Lord for his mariage, or for the marriage of his sonne or his daughter, then shall he pay such a fine for the mariage &c. for that it is the folly of such a free man, to take in such fourme landes or tenementes to holde of his Lord by such bondage, yet that maketh not the free ma villeine.

Also, euery villeine, eyther he is villeine by prescription, that is to say, hee and his auncesters haue been villeins time out of minde, or he is villeine by his owne confession in Court of Record. But if a free man haue diuers issues, and after confesseth himselfe to be villein to another in court of Record, yet his issues which he hath before the confession be free, but the issue which he shall haue after the confession &c. shalbe villeins.

Also if a villaine purchase landes and alieneth

eth the same lands to another before his lord enter, then the lord may not enter, for it shalbe iudged his owne folly that he entred not whē the lande was in the villeines hands. And so it is of his other goodes, for if the villeine giue & sel, or giue goods, to another before that the Lord seised the goods, then the Lord may not seise thē, but if the lord before any such sale or gifte commeth within the house of the villeine where such goods be, & there openly among the neighbours claime the same goods to be his, and so seise parcell of the same in name of seisin of all his goods &c. This is said a good seisin in the law. And the occupation that the villein hath after such claime in the goods, shall be taken in the Lawe, the right of the Lorde, But if the King haue any villeine that purchaseth lands & alieneth before that the King enter, yet the King may enter in the lande in whose handes the land commeth to, Or if the villeine buy or sell diuers goodes before that the King seise the goodes, yet the King may seise them in whose hands soeuer they be Quia nullum tempus occurrit regi, for no time renneth against the king.

Also if a man let lande to another for terme of life, sauing the reuersion to him, and a villeine purchaseth of the lessour the reuersion, in this case it seemeth that the Lord of the villeine may incontinent come to the lande and claime the same reuersion as Lorde of the same villeyne, and by this clayme, the

the reuerſion is incontinent in him, for in any other forme he may not come to the reuerſion, for he may not enter vpon the tenant for terme of life, and if he ought to auoide till after the death of the tenaunt for terme of life, then happely he might come too late, for parauenture the villaine wil grant or alien it to an other in the life of the tenant for terme of life. In the ſame maner it is where a villeine purchaſeth the aduowſon of a Church full of an incumbent, that the Lord of the villein may come to the ſaid Church and claime the aduowſon, And by this claime the aduowſon is in him, for if he abide till after the death of the incumbent, and then preſent his Clarke to the ſaid Church: Then in the meane time the villeine might alien the aduowſon &c. & ſo put out the Lord from his preſentation.

Alſo there is a villein regardant and a villeine in groſſe. Villaine regardant is as if a man be ſeiſed of a Manour, to which a villein is regardant, and he that is ſeiſed of the ſaide Manour, or they whoſe eſtate he hath in the ſame Manour haue bin ſeiſed of the ſaid villein & of his anceſters as villains regardant to the Manour from time out of minde. And villein in groſſe is where a man is ſeiſed of a Manour to the which a villein is regardant, he graunteth the ſame villein by his deed vnto an other, then he is villein in groſſe, and not regardant.

Alſo if a man and his Anceſtours whoſe

whose heire hee is, haue beene seised of a Villaine and of his auncestours, as villaines in grosse time out of minde, such been villaines in grosse, and note well that of such thinges which may not be graunted nor alienedwithout deede or fine, a man that will haue such thinges by prescription may not otherwise prescribe but in him, and his ancesters whose heire he is, and not by these wordes, in him and whose estate hee hath, for that, that hee may not haue their estate without deede or writing the which behoueth to bee shewed to the Court, if hee will haue any aduantage of this, and because that the graunt and the alienation of a villaine lyeth not without deede or other writing: a man may not prescribe in a villeine in grosse without shewing of writing, but in himselfe that claymeth the Villein and in his auncesters whose heire hee is. But of those thinges which bee regardant or appendant to a Mannour, or to other landes or tenementes, a man may prescribe that he and they whose estate hee hath were seised of the Mannour or of such lands or tenementes as regardantes or appendantes to the Mannour or to such landes or tenements &c. from time out of minde, and the cause is for this that such a Mannour, landes and tenements may passe by alienation without deede &c. And it is to wit that nothing is named regardant to a Mannour but a villeine. But certaine other thinges, as Aduowsons and

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commune of pasture &c. be named appendants to the Mannour or to other landes and tenmentes.

Also if a man in Court of Record knowledge himselfe to bee villaine that neuer was villeine before, suche one is villayne in grosse.

Also, a man that is villaine is called villayne, and a woman that is villeine is called nieke, and a man that is outlawed is called an outlaw, and a woman that is outlawed is called a wayne.

Also if a villaine take a free woman to wife the issue betweene them shal be villaine. But if a nieke take a free man to husband, their issue shall be free. And that is contrary to the law ciuile, for there her saith that partus sequitur ventrem.

Also no bastard may be villein, but if that he wil knowledge himselfe to bee a villeine in court of Record, for he is in the Lawe quasi nullius filius, as the sonne of no man, for that he may be inheritour to no man.

Also euery villeine is able and free to sue al manner of actions against euery person except against his Lord to whom he is villeine, and yet in certaine thinges hee may haue against his Lord an action as of appeale for the death of his father, or of his other auncesters whose heire he is, also a nieke which is rauished by her Lorde may haue appeale of Rape against him.

Also

Also if a villaine be made executor to an other, and the Lord of the villaine was indebted to the testator in a certaine summe of money, the which is not payed: In this case the villaine as executor to the testator, shall haue an action of Det against his Lord because he shal not recouer the Det to his proper vse, but to the vse of the testator.

Also the Lord may not take of the possession of such a villeine, that is executour of the deads goods, and if he do, the villaine as executour shall haue an action of Trespas against his Lord for the same goods so taken, and recouer damages to the vse of the testator. But in all these cases it behoueth the Lord (which is defendaunt in such actions) to make protestation that the plaintife is his villaine, or els the villaine shall be enfranchised, though the matter be found for the Lord against the villaine, as it is said.

Also if a villaine sue an action of Trespasse, or other action againste his Lord in one Shyre, and the Lorde sayth, that he shall not be aunswered, for that he is villaine regardaunt to his Mannour in an other Shyre, and the plaintife sayth, that he is franke and of free estate, and no villaine, this shall bee tryed in the Shire where the plaintife hath conceiued his action, and not in the Shire where the Manour is, and this is in fauour of liberty, as it is adiudged Mich. 40. Edward the third.

And

And for this cause was made a statute in the 9. yéere of Richard the second, the tenure of which ensueth in such forme.

Also for that, where many Villeins and Nieles, as well of great Lordes as of other folke spirituall and temporall, flie and goe into Cities and places franchised, as the City of London, and other like places, and faine diuers suites against their Lords, because they would make themselues to be infranchised, it is accorded and assented that the Lordes, nor none other shalbe forbarred of their villeines, because of their answere in the law. By force of which Statute, if any villeine will sue any maner of action to his owne vse in any Shire where it is hard to trie &c. against his Lord, his Lord may chuse to plead that the plaintif is his villein, or to pleade another matter in barre, and if they be at issue, and the issue be found for the Lorde, then the villeine is villaine as hee was before, by force of the same Statute: But if the issue be found for the villain, then is the villain frank and free, for that the Lorde toke not for his plée, that the villain was his villain, but toke it by protestation.

Also the Lorde may not Wayne his villaine, for if he Wayne his villaine, he shall of that be indicted at the Kings suite. And if he be of that attainted, he shal for that make greeuous fine and raunsome to the king. But it seémeth that the villaine shall not haue by the law

law any appeale of Mayme against his Lord, for in appeale of Mayme a man shall not recouer but his dammages. And if the villeine in that case recouer dammages against his Lord, and hath thereof execution, the Lord may take that that the villeine hath in execution from the villein, and so the recouery standeth voide.

Also if the villaine be demaundant in an action reall, or plauntike in an action personell against his Lord, if the Lord will plead in disability of his person, he may not make plaine defence, but he shall defend but the wrong and the force, and demaund iudgement if he shall be answered, and shew his matter by and by how he is villeine, and demaund iudgement if he shall be aunswered.

Also, sixe manner of men there be against whome if they sue actions &c. iudgement may be asked if they shall be aunswered: One is, where the villaine sueth an action &c. against his Lord, as in case aforesaid. The second is, where a man outlawed vpon an action of Det or Trespas, or vpon any other action or Inditment, the tenant, or the defendaunt may shewe all the matter of the record and the outlawrie, and demaund iudgement if he shall be answered, because that he is out of the law to sue any action during the time that he is outlawed. The third is, where an alien borne out of the allegeance of our Soueraigne Lord the king, if such alien sue anie action reall or per-

perſonal, the tenant or defendant may ſay, that he was borne out of the kings allegeance, and aſke iudgement if he ſhall be anſwered. The ſeuenth is, where a man by iudgement giuen againſt him vpon a writ of Præmunire facias &c. is out of the kings protection, if he ſue any action, and the tenant or defendant ſhew al the recorde againſt him hee may aſke iudgement if he ſhalbe anſwered, for the lawe & the kings writs be the thinges by which a man is protected and holpen, and ſo during the time that a man in ſuch caſe is out of the kings protection, hee is out of helpe and protection by the kings law, or by the kings writ.

The fift is, where a man is entred and profeſſed into Religion, if ſuch a perſon ſue an action, the tenant or defendant may ſhew that ſuch a one is entred into Religion in ſuch a place, into the order of Saint Benet, and is there a Monke profeſſed, or in the order of friers Minors or preachers, and is there a frier profeſſed, and ſo of other orders of religion &c. and aſke iudgement if he ſhalbe aunſwered, & the cauſe is this, that when a man entreth into Religion and is profeſſed, he is dead in the lawe, and his ſonne or next coſin incontinent ſhall inherite him, aſwell as though hee were dead indéede, & when he entreth into religion, he may make his teſtament & his executours, and they may haue an action of det due to him before his entre into religion, or any other action that executors may haue, if hée were dead

in

in deede, And if he make none executors when he entreth into religion, then the ordinary may commit the administration of his goods to o-ther as if he were dead indeede. The sixt is, where a man is accursed by the Lawe of holy Church, and he sueth an action reall or perso-nall, the tenaunt or defendant may pleade that he that sueth is accursed, & of this it behoueth him to shewe the Bishops letters vnder his seale, witnessing the accursing, and aske iudg-ment if he shalbe answered &c. but in this case if the demaundant or plaintife cannot deny it, the writte shall not abate, but the iudgement shall be that the tenant or defendant shall goe quite without day for this, that when the de-maundant or plaintife hath purchased his let-ters of absolution, & shewed them to the court he may haue a resummons or a reattachment vpon his original after the nature of his writ &c. But in the other cases the writte shall a-bate &c. if the matter shewed may not be gain-said.

Also if a villain be made a seculer priest, yet his lord may seyse him as his villein, and seise his goods &c. But it seemeth that if the villein enter into religion and is professed &c. that the lord may not take him nor seise him for that he is dead in the law. And no more then if a free-man take a niese to his wife, the lord may not take ne seise ỹ wife of the husbād. But his re-medy is to haue an action against the husbād, for ỹ he toke his niese to wife without his wil.

and so may the lord haue an action against the soueraigne of the house that taketh & admitteth his villein to be possessed in ỹ same house without licence and will of his Lord &c. and shal recouer his dammages to the value of the villaine for he that is professed Monke &c. shal be a Monke, and as a Monke shall be take̅ for terme of his life natural, except he be derained by the law of the holy Church, and he is holden by his religion to keepe his cloyster, and if the lord may take him out of the house, then he should not liue as a dead person, nor after his religion, which should be inconuemēt &c. For if there bee warden in chiualry of body and lands of a childe within age, if the child when he commeth to the age of xiij. yeere enter into religion & is professed the warden hath none other remedy, as to the warde of the body, but a writ of Rauishment of warde against the soueraigne of the house. And if any being of full age, that is cosin and heire vnto the childe enter into the lande, the warden hath no remedie as to the ward of the land, because that the entre of the heire of the childe is lawfull in such case.

Also in many diuers cases the Lord may make manumission and infranchising to his villaine. Manumission is properly when the Lord maketh his deede to his villaine to enfranchise him by this worde Manumittere, which is as much to say, as extra manū, & extra potestat alterius ponere, as to put him out

of

of the hands and the power of another. And for this that by such a deede the villeine is put out of the hand and power of his lord, it is called manumission. And so every maner of enfranchising made to a villeine, may bee saide a manumission. Also if the Lord be make to his villeine an obligation for a certaine summe of money, or graunt vnto him by his deede an annuity, or let him by his deede, landes or tenements, for terme of yeres, the villaine is enfranchised. And if the Lord make a feoffement to his villaine of any landes or tenements by deede or without deede in fee simple or fee taile, or for terme of yeres, and deliuereth vnto him the seisin, this is an enfranchising, but if the Lord make to him a lease of landes or tenements, to holde at the will of the Lorde, by deede or without deede, this is no enfrancheling, for that hee hath no manner of certaintie nor suerty of his estate, but that the Lord may put him out when hee will. Also if a Lorde sue against his villaine a Præcipe quod reddat, if he recouer or be nonsuit after apparance, this is a manumissiō, for this that hee may lawfully enter into the land without such suit. In the same manner it is if he sue against his villaine an action of Dette, or of accompt, or of couenant, or of Trespas, or such other this is an enfranchising &c. for this that he may empryson his villaine, & take his goods without such suit. But if the Lord sue his villaine by appeale of felony, this is

none enfranchising to the villeine though the matter of the appel is found against the Lord, because that the lord may not haue the villein hãged bout such sute. But if the villein were not endicted of the same felony before the apel sued against him, and is aquitted of the felony, so that he recouer damages against the Lorde for the false appeal: Then in this case the villein is infranchisid because of the iudgment of damages that was giuẽ to him against his lord. And more cases and matters there be by ꝑ which a villein may be enfranchised against his lord Sed de illis quære. Also if a Lord of a Manor will prescribe that it hath bin accoustomed within his manor, time out of mind, that euery tenant within the same Manor that marrieth his daughter to any man without licence of the lord of the Manor shal make fine to the Lord for the time being, this prescription is void, for none ought to make such fins but only villains, for euery frée man may freely marry his daughter to whome it pleaseth him, and his daughter. And because that this prescription is against reason, such prescription is void. But in the shire of Kent of lands holden in gauelkind, where by the custome vsed time out of mind the children males ought euenly to enherite, this custome is allowable, for this that it is with some reason, because that euery sonne is as greate a Gentleman as the elder sonne, and because of that more greate honour and valure shall growe then if

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if he had not hing by his ancestors, where peradventure he might not so grow &c.

Also, where by Custome called Borough English, in some Borough the yongest sonne shal inherite al the tenements &c. this custome also standeth with reason, because that the yōger sonne if he lacke father and mother, (because of his yong age) may least of all his brethren help himselfe &c. But if a man will prescribe, that if any cattel were vpō the demeans of his manor, there doing damage, that ỹ Lord of the mannor for the time being hath vsed to distraine them, and the distres to retain til fine were made to him for the damages at his will, this prescription is void, because it is against reason, that if wrong be done to a man, that he thereof should be his owne iudge, for by such way, if he had damages but to the value of an halfepeny, he might assesse & have therefore an C.li. which should be against all reason. And so such prescription, or any other prescription vsed, if it be against all reason, this ought not, nor will not be allowed before Iudges, Quia malus vsus abolendus est.

## Rents.

THree manner of rentes there be, that is to say, Rent service, Rent charge, and Rent secke. Rent service is, where a man holdeth his land of his Lord by fealty & certain rent, or by other service, and certaine rent, or by homage, fealty, and certaine rent, and if rent

seruice at any day that it ought to be paied, bee behinde, the Lorde may distraine for that of common right. And if a man nowe will giue landes or tenementes to another in the taile, yeelding to him certaine rent by the yeere, he of common right may distraine for the rent behinde, though that such gift was made without a deede, because that such rent is rent seruice: But in such case where a man vpon such a gift or lease, will reserue to him rent seruice, it behoueth that the reuersion of the landes & tenements be in the donor, or in the lessor: for if a man will make a feoffement in fée, or will giue landes in the taile, the remainder ouer in fée simple, without a déede, reseruing to him certaine rent, such reseruing is void, because that no reuersion is in the donor, and such a tenant holdeth his land immediately of the Lorde of whom his donor held. And this is by force of the Statute of Westminst. the 3. cap. 1. Quia emptores terrarum, For before the same estatute, if one made a feoffement in fée simple by deed or without déede, yeelding to him or to his heires certaine rent, this was rent seruice, and for this he might distreine of common right: And if he made no reseruation of any rent, nor of any seruice, yet the feoffée held of the feoffor by such seruice, as the feoffor helde ouer of his Lorde next aboue. But if a man by déed indented at this day, make such a gifte in the tayle, the remainder ouer in fée &c. or feoffement in fée, and by the same In-

penture

hendure reserueth to him and to his heires a certaine rent, and that if the rent bee behinde, that it shall be lawfull to him and to his heires to distraine &c: such rent is rent charge, because such lands and tenements be charged of such distresse by force of the writing only, and not of cõmon right. And if such a man in such a deede indented, reserue to him & to his heires certaine rent, without any such clause set or put in the deede, that he may distraine &c. that such rent is rent secke, because that he cannot distraine to haue the rent if it be denied by the same distresse, and if hee were neuer seised in this case of the rent, he is without remedy, as shalbe said hereafter.

Also if a man seised of certaine land, graunt by his deed Poll, or by Indenture, a perely rẽt issuing out of the same lande to another in fée simple, or in fée taile, or for terme of life &c. with clause of distresse &c. then that is rent charge, and if it be without clause of distresse, then it is rent secke. And note well, that rent secke. Idem est quod redditus siccus, because that no distresse is incident to it.

Also if a man grant by his deed rent charge to another, & the rent is behinde, the graunte may chuse if he will sue a writ of annuity of it against the grauntor, or distraine for the rent behind, and the distresse to withhold till he be of that paied: But he may not doe & haue both togither, for if he take a writ of annuitie, then the land is discharged, and if he sue not a writ

of

of annuity, but distrain for the arrerages, and the tenant sueth a Replegiare &c. and the grãte auoweth the taking of the distresse in the land &c. in Court of recorde, then is the lande charged, and the persõ of the grantor discharged of an action of annuity.

Also, if a man will that another shall haue a rent charge issuing out of his landes, but hee will not that his person shal be charged in any manner by a writte of Annuity, then he may haue such clause in the ende of his deede, Prouiso semper quod presens scriptum, nec aliquid in eo specificatum, non aliqualiter se extendat ad onerandum personã meam per breue de annuali redditu, Sed tantummodo ad onerandum terram & tenementa prædicta, de annuali reddit prædicto, and then is the land charged, & the person of the grantor discharged.

Also, if a man make such a deede in such manner, that if A. of B. be not yerely paied at the feast of Christmas for terme of life of xx.s. of lawful mony, that then it shalbe lawful to the said A. of B. to distraine for it in the manor of F. &c. this is a good rent charge, because that the manor is charged of the rent by way of distresse: and yet the person himselfe that made such a deed is discharged in this case of an action of annuity, because that he granted not by his deed any annuity to the said A. of B. but grãted only y^t he may distrain for his annuity.

Also, if a man haue a rent charge to him and to his heires issuing out of certaine lande,

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if he purchase any parcell of the lande to him and to his heires, all the rent is extinct and annulled because that rent charge may not in such maner be apporcioned, but if a man that hath rent seruice purchase parcell of the lande whereof the rent is, this shall not extinct all, but for the portion, for that rent seruice in such case may be apporcioned, and shall be apporcioned after the value of the lande, but if a tenaunt holde his lande by seruice to ryde to his Lorde yerely at such a feast an horse, or an hauke, or such thinge semblable, if in such case the Lord purchase parcell of the land, the seruice is gone, because that such seruice may not be seuered nor apporcioned, but if a man holde his lande of another by homage, fealtie, and escuage and by certaine rent, if the Lorde purchase parcell of the lande &c. In that the rent shalbe apporcioned as is aforesaide, but yet in this case the homage and fealty abideth whole to the Lorde, for the Lorde shall haue the homage and fealtie of his tenaunt for the remenant of landes and tenementes holden of him as he had before &c. for this that such seruices be no annuell seruices, and may not be apporcioned. But the escuage may and shall be apporcioned after the quantitie and rate of the lande.

Also if a man haue a rent charg, and his father purchaseth parcell of the tenemẽts charged in the fee, and dieth, and that parcel discendeth to his son that hath the rent charge now

this

this rent charge shalbe appoyncioned after the saine of the land as is aforesaid of yet seruice, because that such a portion of the lande purchased by the father, commeth not to the sonne by his owne deed, but by discent and course of the lawe.

Also if there be Lorde and tenant, and the tenant holdeth of his lorde by fealtie and certein rent, and the Lord graunteth the rent by his deede to another &c. reserving to him the fealtie, and the tenant attourneth to the graunt of the rent, now such rent is rent seeke to the grauntee for this that the tenements be not holden of the grauntee of the rent, but be holden of the lorde that reserueth to him fealtie. And in the same maner it is where a man holdeth his land by homage, fealtie and certeine rent, if the lorde grant the rent, sauing to him the homage, such rent after such grant is rent seeke, but where lands or tenements beine holden by homage fealtie, and certeine rent, if the lorde will graunt the homage of his lande by his deede to another, sauing to him the remnant of the seruices, and the tenant attourneth to him after the forme of the graunt, now in this case ꝑ tenant holdeth his land of the grãtee: and the lorde that graunteth the homage, shall not haue but the rent as rent seeke, and shall neuer distrayne for the rent. For this, that neither homage, nor fealtie, nor escuage may bee saide seeke, for he that hath or ought to haue of his tenant homage, or fealtie, and

escuage

escuage, may of common right distraine for it if it be behinde, for homage, fealty and escuage bin services by which landes and tenementes be holden and been such that in maner may be taken but as services. But otherwise is of rent that was once rent service, for this that when it is severed &c. by the grant of the Lord from the other services, it may not be said rent service, for this that it hath not to it Fealty which is incident to every manner of rent service, and for this it is said rent secke.

Also if a man let land to another for terme of life, reseruing to him certaine rent, if he graunt the rent to an other saning to him the reuersion of the lande so letten by his déde &c. such rent is but rent secke, for this that the graunteé hath nothing in the reuersion of the land. But if he grant the reuersion of the land to another for terme of life, and the tenant attourneth &c. then hath the graunteé the rent as rent service, because he hath the reuersion for terme of life. And so it is to be vnderstoode that if a man giue landes or tenementes in the tatle, reseruing to him and to his heires certaine rent, or let land for terme of life, reseruing certaine rent, if he graunt the reuersion to another, and the tenant attourneth, all the rent and service passeth by the worde of the graunt of reuersion for this that all the rent and service in such caseé bee incidentes to the reuersion and passe by the graunt of reuersion. But though hee graunt the rent to another

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the reuersion passeth not by such graunt &c. And so note well the diuersity. And so it is holden Paschæ 12.E.4.fo.3. But it is adiudged An.26.lib.ass.pl.38.39. whereas the seruices of the tenant in taile were graunted, that that was a good graunt, yet notwithstanding the reuersion remaines.

Also if there bee Lorde, mesne, and tenant, and the tenant holdeth of the mesne by the rēt of fiue shillings, and the mesne holdeth ouer by twelue pence, if the lord aboue purchase the tenancy in fee, then the seruice of the mesnalty is extinct, for this, that when the Lord aboue hath the tenancy he holdeth of the Lorde next aboue him. And if he ought to hold it of him that was mesne, then he should holde one seike Tenauncie immediately of diuers Lordes which should bee inconuenient, and the lawe will sooner suffer a mischiefe then an inconuenience, and for this the seigniory of the mesnalty is extinct. But in so much that the tenaunt holde of the mesne by fiue shillings, and the mesne held but by twelue pēce, so ꝑ hee had more aduantage by iiij.s. then he paied to his Lord, he shall haue the said fower shillings as a rent seeke pertely of the Lord that purchaseth the tenancy.

Also if a man that hath Rent seeke, is once seised of any parcell of the rent, and after if the tenaunt will not pay the rent that is behinde, this is his remedie. It behoueth him to goe by himselfe, or by another,

to

to the lands and tenements, whereof the rent is iſſuing, and there to demaund the arrerages of the rent, And if the tenant denie to pay it, this denying is a diſſeiſin of the rent. Alſo, if the tenant at the time be not ready to pay it, this is a denying and a diſſeiſin. Alſo, if the tenaunt nor none other be dwelling vpon the lands or tenements when he aſketh the arrerages &c. this is a denying in lawe, and a diſſeiſin in deede, and of ſuch diſſeiſins hee may haue an action of Nouel diſſeiſin againſt the tenaunt and recouer the ſeiſin of the rent, and the arrerages, and his dammages and coſtes of his writt and of his plee &c. And if after ſuch recouery the rent be another time denied him, then hee ſhall haue a Rediſſeiſin, and recouer double dammages.

And it is to be had in mind, that this name Aſsiſe is Equiuocum, for ſometime it is taken for a Jury, for in the beginning of the recorde of Aſſiſe of Nouel diſſeiſin, the record ſhall begin thus, (Aſsiſa venit recogñ) which is to ſay, that Iuratores veñ recogñ, and the cauſe is for this, that by the writt of Aſſiſe is commaunded to the Shirife, Quod faciat xii. liberos & legales homines de vicineto &c. videre teñtum illud, & nomina eorum imbreuiari, & quod ſummoñ eos per bonos ſummoñ quod ſint coram Iuſtitiariis &c. parati inde facere recognitionem &c. And for this, that by force of ſuch an originall writte, a Panell by force of the ſame writ ought to be returned &c. It is

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ſaid in the beginning of the Record in Aſſiſe, Aſsiſa venit recogn &c. Alſo in a writ of right it is commonly ſayd, that the tenant may put him in God and in the great Aſſiſe &c. Alſo there is a writ in the Regiſter called, De magna Aſsiſa eligenda, ſo is this a good proofe that this name Aſſiſe is ſometime put for the Jurie, and ſometime it is taken for all the writ of Aſſiſe, and after that intent it is moſt properly and moſt commonly taken, as Aſſiſe of Nouel diſſeiſin, is taken for all the writ of Aſſiſe of Nouel diſſeiſin. In the ſame maner Aſſiſe of commune of paſture, is taken for all the writ of aſſiſe of common of paſture, and aſſiſe of Mordaunceſter, and aſſiſe of Daraine preſentment &c. But it ſeemeth that the cauſe why ſuch writs at the beginning were called Aſſiſes, is for this, that by euery ſuch writ it is commaunded to the Shirife, that hee ſummon xij. &c. which is as much to ſay, that hee ought to ſummon a Jurie &c. and ſometime Aſſiſe is taken for an ordinance, for to ſet certaine things in a certain rule and diſpoſition, as an ordinance that is entred in the auncient eſtatutes is called Aſsiſa panis & Seruitiæ.

Alſo if there be Lord & tenant, and the Lord graunteth the rent of his tenant by deede to an other, ſauing to him the other ſeruices, & the tenant attourneth, that is a rent ſecke, as it is aforeſaid: But if the rent bee denied him at the next day of payment, he hath no remedie, for this, that he had not thereof any poſſeſſion.

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But if the tenaunt when he attourneth to the graunte, or after, will giue a penie, or a halfe penie to the graunte in name of seisin of rent, then if after at the next day of paiment the rent be denied him, he shall haue an Assise of Nouel disseisin. And so it is, if a man graunt by his deede a yerely rent issuing out of his land to another &c. if the grantor then after pay to the graunte a penie, or an halfepeny, in the name of seisin of the rent, then if after the first day of payment the rent be denyed, the grantee may haue an assise, or els not.

Also of rent seck a man may haue an assise of Mortdauncester, or a writ of Ayel or Cosinage, & all other maner of actions reals, as the case hath, as he may haue of any other rent.

Also there be three rules of disseisin of rent seruice, that is to say: Rescous, Repleuin, and Enclosure. Rescous is, when the Lord distraineth in the land holden of him for his rent behind, if the distresse be rescued from him, or the Lord come vpon the lande, and would distrain, and the tenent or another man will not suffer him &c. Repleuin is, when the Lorde hath distrained, and repleuin is made of the distresse by writ, or by plaint &c. Enclosure, is if the lands and tenements be so enclosed, that the Lord may not come within the lande and tenements for to distrain. And the cause why such things so done bee disseisins made to the Lord, is for this, that by such things the Lord is disturbed of the meane by which he ought to

haue come to his rent. And fower causes be of disseisin of rent charge: that is to say, rescous, replevin, enclosure, and denier, for denying is a disseisin of rent charge, as it is aforesaid of rent seck. And two causes be of disseisin of rent seck: that is to say, enclosure, and denier. And yet it seemeth that there is another cause of disseisin of all the three rents aforesaid, that is when the Lord is going to the land holden of him for to distraine for the rent being behinde, the tenant hearing this encountreth him, and forestalleth him the way with force & armes, and manaceth him in such forme, that he dare not come to the land to distraine for his rent behinde &c. for doubt of death, or bodily hurte, this is a disseisin, for this, that the Lord is disturbed of the meane whereby he ought to come to his rent. And so it is if by such forestalling and manacing, hee that hath rent charge or rent seck is forstalled, or dare not come to the land to aske the rent behinde.

## *The third booke.*

### Parceners.

PArceners be in two manners: that is to say, Parceners after the course of the common Lawe, and Parceners after the custome. Parceners after the course of the common Lawe bee, where a man or woman is seised of certain lands or tenements in fee simple, or fee taile, and hath none issue but daugh-

daughters and dieth & the tenements discend to the daughters and the daughters enter into the lands & tenements so to them discended then they be called parceners, and be but one heire to their auncestor and they be called parceners for this, that by the writ that is called Breue de participatione facienda, ꝙ iacto writ cõstraine them ꝙ participation shalde made among thē, & if there be ij. daughters to whom the land discendeth, then they be called ij. parceners, & if they be 3. daughters they be called 3. parceners, and 4. daughters 4. parceners, and so forth, and if a man seised of lands in fee simple or fee taile die without issue of his body, and the tenements discend to his sisters, they be parceners as is afore said. In the same maner it is where he hath no sisters but the lands discended to his aunts, they be parceners, but if a man haue but one daughter she may not be said parcener, but daughter and heire. And it is to wit, the partition betweene parceners may be made in diuers manners, one is when they agree to make partition and make partition of the tenements, as if there bee 2. parceners to deuide betwen thē the tenement in 2. parts, euery part by himselfe in seuerality of euen value, and if there be 3. parceners to deuide the tenementes in 3. parts in seuerality. Another partition there is to chuse by agreement betwen thē and certain of their friends to make the partition betweene them of the lands and tenements in the fourme afore said.

And in such cases after such partitions the eldest daughter shall chose first one of the parts so deuided, which shee will haue for her part. And then the second daughter after her another part &c. if it so be that there be many sisters &c. If it be not that they be otherwise agréed betwéene them, for it may be agréed betwéene them that one of them shall haue such tenementes, and another such tenementes &c. without any such first election, and the part that the elder sister hath, is called in latine Epiria pars. But if the parceners agrée that the elder sister shall make partition of the tenements in the forme aforesaid, and if she do, thé it is said that the elder sister shal chuse the last part after each of her other sisters. Another partition and allotting there is, as if there be iiij. parceners. and after such partition made of the lands, euery part of the land is by it self written in a little scrowle, and it is couered al in wore in a maner of a little ball, so ꝙ no man may sée the scrowle, then are the fower balles of wore put in a Bonet to kéepe in the handes of an indifferent man, & then the eldest daughter first shall put her hand in the bonet which shal take a ball of wore, and the scrowle within the same ball for her purparty, and then the second sister shall put her hand in the Bonet and shal take another, and so then the third sister the third ball &c. and in this case it behoueth eche of them to hold them to their chance and allotment.

Also another partition there is, as if there bee fower parceners, and they will not agree that partition shall be made betweene them, the one of them may haue a writ de participatione faciendi against the other three sisters, or two may haue a writ of Participatione faciendo against the other, or the three against the fourth at their election, and when iudgement shall be giuen vpon such a writ, the iudgement shal be such that partition shall be made betweene the parties, and the Shirife in his proper person shall goe to the landes and tenements &c. and there he by the othe of xij. true men of his bailiwike &c. shall make partition betweene the parties, the one part of the same landes shall be assigned to the plaintife, or to one of the plaintifes, and another part to another &c. not making mention in the iudgement of the eldest sister more then of the youngest, & of the partitiō that he hath thus done, he shall make notice to the Iustices &c. vnder his seale and the seales of the xij. &c. & so in this case may you see that the elder sister shall not haue the first election &c. but the shirife shal assigne the part that she shall haue &c. and it may be that the shirife will assigne the first part to the younger sister, & the last part to the elder.

And note well partition by agreement betweene parceners may by the law be made among them as well by word without deede, as by deede.

Also, if two meases diuende to two par-

ceners, and the one mese is worth by yere xl. s. and the other but x. s. by yere, in this case partition may be made betweene them in such sorme, that the one parcener shall haue the one mese, and the other parcener shall haue the other mese, and shee that shall haue the mese of xl. s. and hers heires shall pay a yerely rent of v. s. issuing out of the same meese to the other parcener and to her heires forever, because that euery of them shall haue euen in value, and such partition made, is good enough, and the same parcener that shal haue the rent of v. s. and her heires may distraine for the rent of common right in the same meese of the value of xl. s. if the rent of v. s. be behind at any time in whose handes soeuer the same meese commeth, though there was neuer writing made of it betweene them. In the same maner it is of partition of all manner of landes and tenementes &c. where such rent is reserued to one, or to diuers parceners upon such partition &c. but such rent is not rent seruice, but rent charge, of common right had and reserued for egalty of the partition. And note well that none bee called parceners by the Common lawe, but women or the heires of women, and which come by landes and tenementes by discent, for if sisters purchase landes or tenementes, of this they be called Iointenaunces and not parceners. Also if two parceners of lande in fee simple make partition betweene them &c. and the parte of the one

valueth

haueth much more then the part of the other, if they were at the time of partition of full age, that is to say, of 21. yeres, then they alway shall abide and neuer be defeated: But if the tenementes whereof partition is made, bee to them in fee taile, and the part that the one hath is much better in yerely value then the part of the other, howbeit that they be excluded during their liues to defeate the partition, yet if the parcener that hath the lesser part in value hath issue and dieth, the issue may disagree to the partition, and enter, & occupy in common that other part that is allotted to her Aunt, and so the Aunt may enter and occupy in common the other part allotted to her sister, as if no partition thereof had bin made &c.

Also, if two parceners of tenements in fee take husbands, and they and their husbands make partition betweene them, if the part of the one be lesse in yerely value then the part of the other during the liues of the husbands the partition shalbe in his force and strength: yet after the death of the husband the wife & hath the lesse part may enter in her sisters part, as it is aforesaid, & defeat the partition: But if the partition so made betweene them were such, that euery part at the time of allotment were equall of yerely value, then it may not after be defeated in such cases.

Also, if there be two parceners, and the ponger of them bee within the age of xxi. yeres, & partition is made betweene them, so that the

part that is allotted to the yonger, is lesse in value then the part of the other: In this case the yonger during the time of her nonage, and also when she commeth to ful age of xxi. yeres, may enter in the poscion to her sister allotted, &c. and defeat the partition: But such a parcener ought to take hede when shee commeth to full age, that she ne take to her owne use, all the profits of the tenements to her allotted, for by y shee agreeth to the partition at such age, in which case the partition shall stand and abide in his force and strength &c. but peradventure the profits of the halfe shee may take, leaving the profites of the other halfe, to her sister &c. It is to wit, that when it is saide males and females be of full age, that shall be understanden of the age of xx. yeres: for if any profession or graunt, release, confirmation, obligation, or any other writting before anie such age bee made by any of them &c. or that anie within such age bee Bailife or Receiuer with anie man &c. al serueth for nought & may be anoyded, Also a man before such age shall not be sworne in no Jurie, nor no inquisition.

Also if tenements be giuen to a man in the taile, which hath as much land in fée simple, and hath issue two daughters and dieth, and the daughters make partition betwéen them, so that the lands in fée simple be allotted to the yonger daughter, in allowance of the tenementes tayled, allotted to the elder daughter, if after such partition the yonger daughter alie-

alieneth the lande in fée simple to an other in fée, and hath issue a sonne or a daughter, and dieth, the issue may enter in the tenemẽts tailed, and them hold in purpartie with their Aunt, and this is for two causes; One is for that, that the issue may haue no remedy of the land alened by his mother, for that the lands was to her in fée simple, and in so much as hee is one of the heires in the taile, & hath nothing recompenced of that, that to him belongeth of the tenements tailed, it is reason that he haue his purparty of the land in taile and namely when such partition maketh no discontinuance of the taile, as shalbe said hereafter in the chapter of Discontinuance. But the contrary is holden M. 20. H 6. f. 13. that is to saye, that they may not enter vppon the parcener that hath the land tailed, but is put to his suite by writ of Formedon. An other cause is, for that, ꝑ it shalbe counted the folye of the elder sister, that she would agree to the partition, where she might haue had halfe the land in fée simple, & halfe of the tenemẽts in the taile for purparty, and so to be sure without dammage &c.

Also if a man seised in a plough land by full title, disseiseth an infant vnder age of an other plough land, & hath issue two daughters, and dieth seised of both those plough lands, the enfants then being within age, & the daughters enter & make partition, & the one plough lands is alloted for the purparty of the one, as percase to the yonger sister in allowãce of ꝑ other

plough

plough land which is allotted to the purparty of the other, so that after the infant entreth in the plough land of the which hee was disseised vpon the possession of the parcener that hath the same plough land, then the same parcener may enter into the other plough land that her sister hath, and holdeth in parcenary with her: But if the yonger sister alien the same plough land to another in fée simple before the entrie of the enfant, and after the child entreth vpon the possession of the alienée, then shée may not enter into the other plough land, for this, that by her alienation shée hath vterly dismissed her selfe to haue any part of the tenements as parcener: But if the yonger sister before the entrie of the enfant make therof a lease for terme of yéres, or for terme of life, or in fée taile, sauing the reuersion to her, and after the childe entreth, there paraduenture it is otherwise, for this, that she dismisseth not her selfe of all that, that was in her, but hath reserued to her the reuersion and the fée simple &c.

Also, if there bée thrée or fower parceners that make partition betweene them, if the part of the one parcener be defeated by such lawfull entrie, shee may enter and occupie the other landes of all the other parceners, and compell them to make new partition of the other landes betweene them &c.

Also, if there bee two parceners, and the one taketh an husband, and the husband and the

the wife haue issu betweéne them, and the wife dieth, and the husband voideth him in the haile as tenant by the curtesie. In this case the parcener that survyueth, and the tenaunt by the curtesie may well make partition betweéne thē &c. And if the tenant by curtesie wil not agrée to make partition, then the parcener that survyueth may haue a writ de participatione facienda &c. and compell him to make partition, But if the tenāt by the curtesie wil haue partition betweéne them, & the parcener that survyueth will not haue it, then the tenant by the curtesie shal haue no remedy for to haue partition, for he may not haue a writ de participatione facienda, for this that he is not parcener, for such a writte lyeth for parceners all onely. And so may ye sée that ꝑ writ de participatione facienda lyeth against tenāts by ꝑ curtesie, and yet himselfe may not haue such a writ.

## Parceners by the custome.

PArceners by the custome bée where a man seised in fée taile of the lands or tenementes that bee of the tenure called Gauelkind within the shire of Kent, & hath issue diuers sonnes and dyeth, such landes and tenements shall discende to all the sonnes by the custome, and they euenly shall inherite and make partition betweéne them by the custome as females doe, and a writte de participatione facienda lyeth in this case as betweéne females, but it

it behoueth in the declaration to make mention of the custome. Also such custome is in other places in England, and also such customs is in North wales.

Also there is an other partition that is of an other nature, and in an other fourme then any of the partitions aforesayde, as a man seised of certaine landes in fée simple hath issue two daughters, and the elder is maried, and the father giueth parcell of the same landes to the husbande with his daughter in franke mariage, and dyeth seised of the remenaunte the which remnaunte is of more greater value by yére then bée the landes gyuen in franke mariage.

In this case the husbande and the wife shall haue nothing for their parte of the sayde remnaunt, but if they will put in their landes giuen in franke mariage in hotchpot with the remnaunt of the lande with her sister, and if they will not do so, then the yonger sister may occupie the same remnant, and take to her the profites onely, and it seemeth that this worde hotchpot is in English a pudding, for in such a pudding is commonly put not one onely thinge, but one thinge with an other, and for this it behoueth in such case to put the landes giuen in Frankemariage with the other landes in hotchpot if the husbande and the wife will haue any thing in the other remnant &c. This word Hotchpot is but a terme of similitude, & is as much to say, as to put the

landes

lands giuen in frankmariage, & other landes in fee simple &c. togither, & this is to such entent to accompt the value of all the lands, that is to say, of the lands giuen in frankmariage & the remnannt that was not giuen, & then partition shall bee made in this fourme that ensueth. As put case that a man is seised of xxx. acres of land in fee simple, euery acre in value xij.d. by the yere which hath issu two daughters, and the one is couert baron, & the father giueth x. acres of the xxx. acres to the husband with his daughter in frankmariage and dieth seised of the remnant, then the other sister shall enter into the remnant, that is to say, in the xx. acres, and shall occupy it to her owne vse, except the husband and the wife wil put their x. acres giuen to them in franke marriage with the other xx. acres in hotchpot, that is to say, together, and then when the value is knowen of euery acre, that is to say, euery acre is yerely worth xij.d. then the partition shall be made in such fourme, that is to say, that the husband and the wife shall haue aboue ý x. acres giuen to them in frankmariage v. acres in seuerality of the xx. acres, and the other sister shall haue the remnant, that is xv. acres of the xx. acres for her part, so that accompting the ten acres that the husband and the wife had in franke-mariage, and the other fiue acres of the xx. acres, the husband and the wife haue asmuch in yerely value as the other sister hath, and so alwayes vppon such partition the landes

giuen

giuen in frankmariage, abide to the donors or to the heires &c. after the forme of the gift &c. For if the other parcener shall haue nothing of this that is giuen in frankmariage, of this should follow an inconuenience, and a thing against reason which the law will not suffer &c. and the cause why that lands giuen in frankmariage shall be put in hotchpot is this, that when a man giueth landes and tenements in frankmariage with his daughter or with his other cosin, it is to be vnderstode by the lawe that such gift made by such wordes frankmariage is an aduancement of his daughter or of his cosin, and namely when the donour and his heires shall not haue any rent or seruice of him, except fealty vntill the fourth degree be passed &c. and for such cause the lawe is that she shall haue nothing of the other landes and tenementes discended to the other parceners &c. but if she will put the tenements giuen in frankmariage in hotchpot, as is afore said, and if she will not put the lands giuen in frankmariage in hotchpot, then she shall haue nothing in the remnant, for this that it shall be vnderstode by the lawe, that she is sufficiently aduanced to which aduancement she agreeth and holdeth her content, and the same Lawe is in this matter betweene the donées in frankemariage and the other parceners, as to put in hotchpot &c. the same Lawe is betweene the heires of the donées in frankemariage and the parceners &c. if the donées in frankemariage

marriage die before their auncestors, or before such particiõ &c. as to put in hotchpot &c. And note well, that gifte in frankemarriage was by the common Lawe, before the Statute of Westminster the second, and alway after, so hath bin vsed and continued &c.

Also such putting in hotchpot &c. is where lands or tenements that were giuen in frankmarriage discend from the donor in frankmeriage all onely, for if the landes discend to the daughters by the father of the donor, or by the mother of the donor, or by the brother of the donor, or other auncestors, and not by the donor &c. there it is otherwise, for in such case shee to whome such gifte in frankmarriage is made, shall haue her parte as if no such gift in frankemarriage had been made, for this, that she was not aduaunced by him &c. but by an other.

Also, if a man seised in xxx. acres of lande, euery acre of euen perely value, hauing issue two daughters, as it is afore said, and giueth of this to the husband of the daughter xv. acres in frankemarriage, and dyeth seised in the other xv. acres, in this case that other sister shall haue the xv. acres so discended to her onlie, and the husband and the wife shall not put in such case the xv. acres to him giuen in frankemarriage in hotchpot &c. for this, that the tenements giuen to him in frankmarriage be of as good perely value as the other landes discended &c.

For

For if the landes giuen in franke mariage were of as muche vaine as the remnaunt, or of more vaine, then in vaine and to none intent such landes giuen in franke mariage shall bee put in hotchpot &c. for this that she may haue nothing of the other landes discended &c. For if she should haue any parcell of the other landes discended, then should she haue more in yeerely value then her sister &c. which the lawe will not &c. And as it is said in the cases aforesaid, of two daughters, or two parceners, in the same maner, and in like cases is, where there be moe sisters, after that as the case and the matters is &c. And it is to wit, that lands and tenements giuen in franke mariage, shall not be put in hotchpot, but with the landes discended in fée simple, for of landes discended in fée taile, partition shall be made as if no such gift in franke marriage had béene made. Also no landes shall be put in hotchpot with other, but landes that be giuen in franke mariage al only. For if any woman haue any other landes or tenements by any other gift in the taile, she shal neuer put such landes so giuen in hotchpot &c. but shée shal haue the part of the remnant, discended &c. that is as much as the other parcener shall haue of the same remnant.

Also another partition may bée made betwéene parceners, that varieth from the partitions aforesaid: As if there bee three parceners, & the youngest would haue partition, and the other two would not, but will hold in par-

ceny

cenary that, that to them belongeth without partition: In this case if one part be allotted in seuerality to the yonger sister after that that shee ought to haue, then the other may hold the remnant in parcenary, and occupy in common without partition, if they will, and such partition is good enough. And if after the elder & middle parcener will make partition between them of that that they held, they may well doe so when they please. But where partition shal be made by force of a writ de participatione facienda &c. there otherwise it is, for there it behoueth that euery parcener haue his part in seuerality &c. More shalbe said of Parceners in the Chapiter of Iointenaunts, and also in the Chapiter of Tenants in common.

## Iointenants.

IOintenants be as a man seised of certaine lands or tenementes &c. and thereof hath infeoffed two, or three, or fower, or more, to haue and to hold to them and to their heires, or to haue and to holde to them for terme of their liues, or for terme of another life, by force of which feoffement they be seised, such be Iointenants.

Also if two or three disseise another of any landes or tenementes to their owne vse, then the disseisours be Iointenants: But if they disseise another, to the vse of one of them, then be they no Iointenants, but he to whome the

ble of the disseisin is made, is sole tenant, and the other haue nothing in the tenancy, but be called coadiutors to the disseisin &c.

And note well, that disseisin is properly where a man entreth into any lands or tenements where his entre is not lawfull, & putteth him out that hath the franktenement &c. And it is to wit that the nature of iointenancy is, that he that suruiueth shall haue only the whole tenancy, after such estate as he hath if the iointure be continued &c. As if three iointenants be in fée simple, & the one hath issu and dieth, yet they that suruiue shal haue the tenements whole, and the issue shall haue nothing, and if the second iointenant haue issue and die, yet the third that suruiueth shal haue the tenements whole, and shal haue them in fée simple to him and to his heires. But otherwise it is of parceners, for if three parceners be, and before any partition the one hath issue and dieth, that that to her belongeth shall discend to her issue, and if such a parcener die without issue, then that that to her belongeth shal discend to her heires, so that they shall haue this by discent, and not by the suruinor as Iointenants haue &c. And as the suruinor holdeth place among Iointenants &c. in the same manner it holdeth place among them that haue ioint estate or possession with others of chatteis real, or chattels personel. As if a lease of lands or tenemẽts be made to many for terme of yeres, he that suruiueth of the lessées shall haue the tene-

tenements whole to him during the terme by force of the same lease. And if any horse, or other chattell personal be giuen to many mo, he that suruiueth shall haue them to himselfe.

In the same maner it is of dets and duelies &c. For if an Obligation be made to many for one duty, hee ỹ suruiueth shall haue all the det, and so it is of all other couenents & contracts.

Also some iointenãts may be that may haue ioint estates, and bee iointenants for terme of their liues, and yet they haue seuerall inheritances, as if lands be giuen to two men, and to the heires of their two bodies engendred: In this case the donées haue ioint estate for terme of their two liues, and they haue seuerall inheritance. For if the one of the donées haue issue and die, the other that suruiueth shall haue all by the suruiuor for terme of his life. And if he that suruiueth hath also issue and die, then the issue of the one shall haue the halfe of the land, and the issue of the other shall haue the other halfe of the land, & they shall hold the land betweene them in common, and be not iointenants, but tenants in common. And the cause that such donees in such cases haue Joynte estate for terme of their liues, is this, for this that at the beginning landes were giuen to them two, which wordes without more saying, made a ioint estate to them for terme of their liues. For if a mã will let land to another by deede, or without deede, not making mention what estate hee hath, and of this maketh

liuery of seisin: In this case the lesse shal haue estate for terme of his life, and so in so much that the lands were giuen to them, they haue a ioint estate for term of their liues. And the cause why they haue seuerall inheritãce is this, in so much that they cannot by possibility haue an heire betweene them ingendred as a man and a woman may haue &c. then the law will that their estate and their inheritance shal be such, as reason will after the forme & effect of the wordes of the gift, and that is to the heires that the one engendreth of his body by any of his wiues, and the heirs that the other ingendreth of his body by any of his wiues &c. So it behoueth by necessity of reason, that they shall haue seuerall inheritance. And in such case, if the issue of one of the donées after the death of the donées die, so that he hath no issue aliue of his body ingendred, then the donour or his heires may enter in the halfe as in his reuersion, though the other of the donées hath issue aliue &c. And the cause is, for so much as the inheritance is seuered &c. the reuersion in the law is seuered &c. and the suruiuour of the issues of the other shall holde no place to haue the whole. And so as it is said of males in the same maner it is where land is giuen to two females, and to the heirs of their two bodies begotten.

Also if landes bee giuen to two females, and to the heirs of one of them, this is a good iointure, and the one hath a free hold, and the

other

other hath fée simple, & if she y hath the fée die, she that hath the freehold shall haue the whole by the suruiuor for terme of life. In the same maner it is where tenements be giuē to two, & to the heires of the body of one of them engēdred, the one hath freehold, and the other fée taile. Also if two iointenaunts be seised of estate of fée simple, and the one granteth a rent charge by his deede to another out of that that to him belongeth &c. In this case during the life of the grantor, the rent charge is effectual. But after his decease the rent charge is void as to charge the land, for that he hath the land by the suruiuor, shal hold all the land discharged. And the cause is for this, that he that suruiueth claimeth to haue the land by the suruiuour &c. and not by discent of his fellowe &c. But otherwise it is of Parceners, for if there be two parceners of tenements in fée simple, and before any partition the one chargeth that that to him belongeth by his deede, of a rent charge &c. & dieth without issue, and that that to him belongeth, discendeth to the other parcener, In this case the other parcener shall hold the land charged &c. for this that he commeth to the halfe by discent as heire &c.

Also if there bee two Iointenaunts in fée simple within one borough where the landes and tenements within the same borough bee deuisable by testament, if the one of the saide Iointenaunts deuise that, that to him belongeth by testament &c. and die, this deuise is

hold. And the cause is this, that no deuise may take effect but after the death of the deuisor. And for this that by his death all the land incontinent commeth by the law to his fellow that suruiueth, by the suruiuor, which neither claimeth nor hath any thing in the land by the deuise, but in his owne right by the suruiuor after the course of the Lawe &c. for this cause such deuise is voide.

But otherwise it is of Parceners seised of tenements deuisable in such case of deuise &c. Causa qua supra.

Also it is commonly said, that euery iointenant is seised of the land that he holdeth iointly &c. throughout & by al. And this is as much to say that he is seised by euery parcel, and by all &c. and this is true, for in euery parcel, & by each parcel, and by al the landes & tenements he is iointly seised with his fellowes &c.

And if two iointenants be seised of certaine landes in fée simple, and the one letteth that, that to him belongeth to a straunger for terme of xl. yéres and dyeth within the terme. In this case after his decease the lessée may enter and occupy the haile to him letten during the terme &c. though the lessée neuer had possession of it in the life of the lessor, by force of this lease &c. And the diuersitie betweéne the case of the grant of a rent charge and this case is this, for in the graunt of a rent charge by a iointenant the tenants abide alway as they were before, without that, that any hath any right to haue

parcel

parcel of the tenements but himselfe, and the tenementes abide in such plight as they were before the charge &c. But where a lease is made by a iointenaunt to another for terme of yéares &c. incontinent by force of the lease the lessée hath right in the same land, that is to say of all that, that to his lessor belonged, & to haue that by force of the same lease during his term &c. and this is the diuersitie &c.

Also iointenants if they wil may make partition betweén them, and the partition is good inough, but they shall not be compelled by the law to do it, but if they will make partition of their proper will and agreement, the partition shal stand in his strength, 27.3.E.4. See St. 31. H.8. cap. 21. & 32. H.8. ca. 32.

Also, if a ioint estate bee made of land to the husband and the wife, and to a third person, in this case the husband and the wife haue not in the law in their right but the halfe &c. And the third person shal haue as much as the husband and the wife haue, that is to say, the other halfe &c. And the cause is, for that the husband and the wife be but one person in the law, & be in like case as if the estate be made to two iointenants, where each one hath by force of the iointure the one halfe, and the other the other halfe. In the same maner it is, where an estate is made to the husband and the wife, & to other two men, in this case the husband and the wife haue not but the third part, and the other two men the other two partes &c. Causa

quia supra. More shall be said of them touching Jointenancie, in the Chapiter of Tenants in Common.

## Tenants in Common.

TEnants in Common bee they, that haue landes and tenements in fée simple, fée taile, or for terme of life &c. which haue such landes and tenements by seuerall title. and not ioint title, & none of them knoweth that, that is seuerall to him. But they ought by the law to occupie such lands and tenements in common & vndeuided to take the profites in common. And because that they come to such landes & tenements by seuerall titles, & not by one selfe ioint title, and their occupation & possession shall bee by the law among them in common, therefore they be called Tenants in Common: as if a man enfeoffe two Jointenants in fée, and one of them alieneth that that to him belongeth to another in fée, nowe the other iointenant and the alienée be tenants in common, for this that they be seised in such tenements by seuerall titles, for the alienée commeth to the halfe by the feffement of the one iointenant, & the other iointenant hath the other halfe by force of the first feoffement made to him and to his first fellow, and so they be in by seuerall titles, and by seuerall feoffements &c. And it is to wit, that when it is saide in any booke, that a man is seised in fée, without more saying it shalbe vn-

vnderstood fée simple, for it shall not be vnderstood by such word in fée, that a man is seised in fée taile, except that there be put therto such addition, that is to say, fée taile.

Also if three Jointenants be, and the one of them alieneth that, that to him belongeth to an other in fée: In this case the alienée is tenant in common with the other two Jointenants. But yet the other two Jointenants bee seised of the two partes iointly, and of those two partes the survivour betweene them holdeth plee &c.

Also if there be two Jointenants in fée, and the one giueth that, that vnto him belongeth to another in the taile, the donée and the other jointenants be tenants in common &c. But if the landes bee giuen to two men, and to the heires of their two bodies ingendred, the donées haue iopnt estate for terme of their liues, and if each of them haue issue and die, their issues shall hold in common &c. But if landes be giuen to two Abbots, as to the Abbot of Westminster, and to the Abbot of Saynt Albons, to haue and to hold to them and to their successors, in this case they haue in continent at the beginning estate in common, and not joint estate: And the cause is for this, that euery Abbot, or other Soueraign of an house of Religion before that hee be made Abbot or Soueraigne, was but a dead man in the law. And when he is made Abbot, he is as a man personable in the lawe, all onely to purchase,

and to haue lands and tenements, and other things to the vse of his house, & not to his own proper vse, as other secular men may. And for this in the beginning of their purchase, they be tenants in common. And if the one of them die, the Abbot that surviueth shall not haue all by the survivor, but the successour of the Abbot that dieth shall holde the halfe in common with the abbot that survinueth &c.

Also if landes be giuen to an abbot and to a secular man, to haue and to hold to them, that is to say, to the abbot and his successors, and to the secular man, to him and to his heires, they haue estate in common, Causa qua supra.

Also if lands be giuen to two men, to haue and to hold, the one halfe to the one and to his heires, and the other halfe to the other & to his heires, they be tenants in common &c.

Also if a man seised of certaine landes enfeoffeth another in the halfe of the same lande, without any speech of assignement or limitation of the same halfe in severalty at the time of the feoffement, then the feoffée and the feffor shal hold the parts of the land in common. And in the same maner as is aforesaid of tenaunts in common of lands or tenements in fée simple or in fée taile, in the same maner may it be said of tenants for terme of life. As if two Jointenants be in fée, & the one letteth to a man that, that vnto him belongeth for terme of life, & the other iointenant letteth that, that to him belongeth to another for terme of life, these two

lessees

lessées be tenants in cõmon for terme of their lines &c.

Also if a man let landes to ij. men for terme of their lines, & the one graunteth all his estate of that that vnto him belongeth to another &c. then the other tenant for terme of life, & he to whom the grant is made be tenants in cõmon during the time that both lessées be aliue.

And it is to be remembred, that in all other such cases, though that they be not here expressly named or specified, if they be in like reason, they be in like law.

Also if there be two iointenants in fée, and the one letteth that, that vnto him belongeth to another for terme of life, the tenant for term of life, during his life, and the other iointenant that did not let be tenants in common. And vpon this case a question may rise as this: Put the case that the lessor hath issue and dyeth, leuing the other iointenaunt his fellow, and leuing the tenant for terme of life, the question may be such, if the reuersion of the halfe &c. that the lessor hath, shall discend to the issue of the lessor, or that the other iointenant shall haue it by the suruiuor. And some haue said in this case, that the other iointenant shal haue the reuersion by the suruiuor, & their reason is such, when the iointenãts were iointly seised in fée simple &c though the one of them made estate of that, that vnto him belongeth for terme of life, and though that hee hath seuered the frankstenement of that, that to him belongeth

by

by the leaſe, yet hee hath not ſeuered the fée ſimple, but the fée ſimple abideth to him iointly as it was before. And ſo it ſéemeth vnto thē that the other iointenant that ſurmeth, ſhall haue the reuerſion by the ſurmuor &c. And other haue ſaid the contrary, and this is their reaſon, when one of the Iointenaunts letteth this that to him belongeth to another for term of his life, that by ſuch leaſe the franktenement is ſeuered from the iointure. And by the ſame reaſon the reuerſion that is dependaunt vpon the ſame franktenement, is ſeuered frō the iointure. Alſo if the leſſor had reſerued to him a yerely rent vpon the leaſe, the leſſour onely ſhould haue had the rent &c. The which is a proofe that the reuerſion is onely to him, and that the other hath nothing in the reuerſion &c. And if the Tenaunt for terme of life were impleaded &c. and made default after default, then the leſſour ſhall bée onely of this receiued to defend his right, and his fellowe in this caſe in no manner ſhall bée receiued: which proueth that the reuerſion of the halfe is onely in the leſſor. And ſo by conſequence if the leſſour die, liuing the leſſée for terme of life, the reuerſion ſhall diſcend to the heires of the leſſour &c. and not come to the other Iointenaunt by the ſurmuour, Ideo quære. But in this caſe if the iointenāt that hath the franktenement haue iſſue and die, liuing the leſſour & the leſſée, then it ſéemeth that the iſſue ſhall haue the halfe in his demeſne as of

fée

fée by diſcent, for this that the franktenement may not by nature of the iointure be annexed to a reuerſion. And it is certaine, that he that did not let was ſeiſed of the halfe in his demeſne as of fée, and none ſhall haue any ioynture in his franktenement, Ergo this ſhal diſcend to his iſſue, Sed quære. But if it be thus that the law in this caſe is ſuch, that if the leſſor die liuing the leſſee, and liuing the other iointenãt ꝑ hath the franktenement of ꝯ other halfe, that the reuerſion ſhall diſcend to the iſſue of the leſſor, then is the iointure and the title that any of them may haue by the ſurrenor by right of the iointure, annulled and all vterly defeated for euer.

In the ſame manner it is if the iointenaunt that hath the franktenemẽt die, liuing the leſſor & the leſſee, if the law be ſuch that his frãktenement and fée that he hath in the halfe ſhall diſcend to his iſſue, then the iointure ſhall be defeated for euer &c.

Alſo if thrée iointenants be, and the one releaſeth by his deede to one of his fellowes, all the right that he hath in the land, then hath he to whom the releaſe is made, the third part of the lands by force of the releas, and he and his fellow ſhal hold the other 2. parts iointly. And as to the third part that he hath by force of the releaſe, he holdeth the third part with himſelf and his fellow in common.

And it is to wit, that ſometime a deede of releaſe ſhall take effect, and ſhall be in vre to

put the estate of him that made the release, to him to whom the releas is made, as in ỳ case aforesaid.

And also if a ioint estate be made to the husbande and his wife, and to a thirde person, and the third person releaseth his right that he hath &c. to the husband, then hath the husband the halfe that the third person had, and the wife of this hath nothing. And if in such case the third release &c. to the wife, not naming the husband in the release, then hath the wife the halfe that the third person had: and the husbande hath nothing of this, but in right of his wife, for this that in such case the release shall enure to put the estate to him to whome the release is made of all that, that belongeth to him that made the release. And in some case a release shall enure to put all the right that hee hath that made the release, to him to whom the release is made. As if a man seysed of certaine landes and tenements, is disseised by two disseisors, if the disseisé by his deede release all his right &c. to one of the disseisours, then hee to whome the release is made, shall haue and holde all the tenements to him onely, and put his fellowe out of euery occupation of it: and the cause is, for this, that the two disseisours were seised in the tenements by wrong of them done against the Law. And when one of them hath the release of him that had right to enter &c. this right in such case resteth in him to whome the

rest

releas is made, and in such plight, as if he that had the right had entred and enfeoffed him &c: And the cause is for this, that he that before had an estate by wrong, that is to say, by disseysin, nowe by the release hath a rightfull estate.

And in some case a release shall enure by way of extinguishment, and in such case such release shall helpe the tointenant to whom the release is not made, aswell as to him to whom the releas is made. As if a man be disseised, & the disseisor maketh a feffement to two men in fée, if the disseisée release to one of the feffées in fée by his déede, then such release shal enure to both the feffées. for this, that the feffées haue estate by the lawe, that is to say, by the feoffement, & not by any wrong done to any other.

And in the same manner it is, if the disseisor make a release to a man for terme of life, the remainder ouer to another in fée, if the disseisée release to the tenants for terme of life, all his right &c. this release enureth aswell to him in the remainder, as to the tenant for term of life &c. And the cause is for this, the tenaunt for terme of life cõmeth to his estate by the course of the lawe, and for this the release shall enure & take effect by way of extinguishment of the right of him that hath released &c. And by this releas the tenaut for term of life hath no greater estate then hee had before the release made vnto him, and the right of him that released is all vtterly extinct. And in so much that such re-

release cannot inlarge the estate of the tenant for terme of life, it is reason that the release shall enure to him in the remainder &c. More shall be saide of Releases, in the Chapter of Releases.

Also if there be two parceners, and the one alieneth that, that vnto him belongeth to an other, then the other parcener and the aliene be tenants in common.

Also tenants in common may be by title of prescription, if the one and his auncestors, or they whose estate he hath in the halfe, haue holden in common, the same halfe with the other tenāt that hath the other half, and with his auncestors, or them whose estate he hath as vndeuided, from time whereof no memory runneth. And diuers other matters may make and cause men to be tenants in common that be not here expressed.

Also in some case tenants in common ought to haue of their possession seuerall actions, and in some cases they shal ioine in one action. For if there be two tenants in common, and they be disseised, they ought to haue against the disseisor two Assises, & not one Assise, for euerie of them ought to haue an Assise of his halfe &c and the cause is for this, that tenants in common were seised by seuerall titles: But otherwise it is of Iointenants, for if there be xx. Iointenaunts, and they be disseised, they shall haue in all their names but one assise, because that they had but one ioint title.

Also

Also if there be three Jointenants, and one releaseth to one of his fellowes all the right that he hath, and after the other two be disseised of the whole &c. in this case the other shall have severall assises in this forme, that is to say, they shall have in both their names one Assise of the two partes &c. for this that they held the two partes iointly at the time of the disseisin: And as to the third part, he to whom the release was made, ought to have thereof an assise in his owne name, for this, that as to the third part hee is tenaunt in common &c. for this, that he came to the third part by force of the release, and not onely by force of the iointure.

Also, as to sue actions that touch the realty, there is diuersity betweene parceners that be in by diuers discents, and tenants in common. For if a man seised of certaine lands in fee have issue two daughters, and die, and they enter &c. and each of them hath issue a sonne & both with out partition made betweene them, by which the one halfe discendeth to the sonne of the one parcener, and the other halfe discendeth to the sonne of the other parcener, & they enter and occupy in common, and be disseised: in this case they shal have in their two names one assise, and not two assises: and the cause is, that though they come in by diuers discents &c. yet they bee parceners, and de facto de participione facienda both betweene them, and they bee not parceners having regarde of re-

respect onely to the seisin and possession from their mothers, but they be parceners having more respect to their estate that discended from their grandfather to their mothers. For they may not bee parceners, where their mothers were not parceners before &c. And so to such respect and consideration, that is to wit, as to the first discent that was to their mothers, they haue a title in parcenarie, the which maketh them parceners. And also they be but as one heire to their common auncestor, that is to say, to their graundfather, from whome the land discended to their mothers: and for these causes before partition betweén them &c. they should haue one assise, though they come in by seuerall discents &c.

Also, if there be two tenants in common of certaine lands in fée, and they giue the same land to another man in the taile, or let it to another man for terme of life, yéelding an annuitie, or certaine rent, and a pound of Pepper, or an Hauke, or an Horse, and they bée seised of these seruices, and after all the rent is behind, and they distraine for it, and the tenaunt maketh reseous: In that case as to the rent and the pound of Pepper, they shall haue two assises: and as to the Hauke and the Horse but one assise. And the cause why they haue two assises as to the rent and pound of Pepper is this, in so much that they were tenants in common by seuerall titles, and when they made a gift in the taile, or leale for terme

of

of life &c. saving to the the reuersion, and yeelding to them certaine rent &c. Such reseruation is incident to their reuersion.

And for this that their reuersion is in common, and by seuerall titles, as their possession was before the rent, and other thinges that may be seuered and were to them reserued vpon the gifte or vpon the lease, which bee incident by the law to the reuersion, such thinges so seuered were of the nature of the reuersion, which reuersion is to them in common by seuerall titles.

And it behoueth that the rent of the pound of Pepper which may be seuered bee to them in common by seuerall titles. And of this they shall haue two assises, and euery of them in his assise shal make his plaint of the halfe of the rent, and of the halfe of the pound of Pepper &c.

But of the Hauke & the Horse which cannot bee seuered, they shall haue but one assise, for a man may not make a plaint in assise of the halfe of an hauke, or of the halfe of an horse &c. In the same maner it is of other rents and seruices that tenants in comon haue in grosse by diuers titles.

Also, as to actions personels, tenaunts in common ought to haue such actions personels iointly in all their names, that is to saie, of Trespasse, or of offences that touch their tenementes in common: as of breaking of their houses, breaking of their closes and

paſture es, washing & de louing of their graſſe, cutting of their wood, & to fish in their ponds, and such other: In this case tenants in comon shall haue one action iointly and recouer iointly damages, because that the action is in the personalty and not in the realty.

Also, if two tenaunts in common make a lease of their two tenementes to an other for term of yeres, yelding vnto them yerely a certaine rent, if the rent be behind &c. the tenãts shall haue one action of det against the lesse, & not diuers actions, for that the action is in the personalty.

Also tenants in common may make partition betweene them if they will, though they shall not bee compelled by the lawe. But if they make partition betweene them by their agreement and assent, such partition is good enough, as it is adiudged in the booke of Assises, P. 3. E 4.

Also as there be tenãts in common of lands or tenements &c. as is aforesaid: In the same maner ther be tenants in common of chattels reall, and chattels personall. As if a lease bee made of certaine landes to two men for terme of xx. yeres, and whẽ they be therof possessed, the one of the lesses graunteth that, that vnto him belongeth before, of the terme to another, then he to whome the grant is made, and the other shall hold and occupie in common.

Also, if two tointenantes haue the ward of the body and of the landes of a childe within age,

age, and the one of them graunteth to another that, that vnto him belongeth of the same ward, then the grantée & the other that graunteth not, shal haue and hold it in common &c.

In the same maner it is of chattels personals, as if two haue a ioynt estate by gift or by buying of a horse, or an Oxe &c. the one of them graunteth that, that to him belongeth of the same horse or oxe &c. Then the graunteé and he that graunteth not, shal haue & possesse such chattel personall in common &c. And in such cases where diuers persons haue chattels reals or personals in common, and by diuers titles, and one of them dye, the other that suruiueth, shall not haue that by the suruiuor, But the executours of him that dyeth shall hold and occupie that with him that suruiueth, as their testatour did or ought in his life &c. for this that their titles and right in this case were seuer all.

Also, in this case aforesaid, if two haue estate in common for terme of yeres, & the one occupy all and put the other out of his possession and occupation, Then shal he that is put out of occupation, haue against the other a writ de Ejectione firmæ for the halfe against the other. In the same maner it is where two holde the warde of landes or tenements during the nonage of a child, if one put out the other of his possession, he that is out, shal haue a writ of Ejectment de garde of the halfe, for this that those thinges bée chattels reals,

and may be apportioned and seuered &c. But no such action of trespas, that is to say, Quare clausum suum fregit, & herbam suam concul. cauit & consumpsit &c. And such like actions the one may not haue against the other, for this that ech of them may enter and occupy in common &c. throughout and by all the tenements which they hold in common. But if two be possessed of chatteis personals in common by diuers titles, as of an horse, or an oxe, or a cow, if the one take it all to himselfe out of the possession of the other, the other hath none other remedy but to take this of him that hath done to him the wrong for to occupy in common when he may see his time.

In the same maner it is of chattels reall that may not be seuered, as the case afore said: Two be possessioners of a ward of the body of a childe within age, if one take the child out of the possession of the other, the other hath no remedy by any action by the law, but to take the childe out of the others possession when he seeth his time &c.

Also, when a man in pleading will shew a déde of feoffement made vnto him, or a gift in the tayle, or a lease for terme of life of any landes or tenements, there he shall say by force of which feoffement, gift, or lease, he was seised &c. But where a man will plead a lease or graunt made vnto him of a chattel reall or personel, there he shall say, by force of which he was possessed.

Where

More shall be said of Tenants in common in the Chapter of Releases, and Confirmations.

## Estates vpon Condition.

Estates that men haue in landes or tenements be in two maners: that is to say, they haue estate vpon condition in déede, or vpon condition in law. Vpon condition in déede, is as a man by déede indented inferesseth an other in fée, reseruing to him and to hys heires yerely a certaine rent, payable at one feast, or at diuers feasts by the yere, vpon condition, that if the rent be behind &c. that it shal be lawfull to the feoffour and to his heires to enter into the landes or tenements &c. Or if the land be alyened to an other in fée, to yeld vnto hym certaine rent &c. And if it hap that the rent be behind by a weeke after any day of payment of it, or by a Moneth, or by a halfe yeare after any day of payment, that then it shall be lawfull to the feoffour and to his heires to enter &c. In this case, if the rent be not payed at such a day, or before such a time limitted and specifyed wythin the condition comprysed in the Indenture, then may the feoffour or hys heyres enter into such landes or tenements, and them in hys first estate to haue and to holde, and of this to put the feoffée cleane out: And it is called Estate vpon condition, for this, that the

and may be apportioned and seuered &c. But no such action of trespas, that is to say, Quare clausum suum fregit, & herbam suam concul. cauit & consumpsit &c. And such like actions the one may not haue against the other, for this that ech of them may enter and occupy in common &c. throughout and by all the tenements which they hold in common. But if two be possessed of chattels personals in common by diuers titles, as of an horse, or an oxe, or a cow, if the one take it all to himselfe out of the possession of the other, the other hath none other remedy but to take this of him that hath done to him the wrong for to occupy in common when he may see his time.

In the same maner it is of chattels reall that may not be seuered, as the case afore said: Two be possessioners of a ward of the body of a childe within age, if one take the child out of the possession of the other, the other hath no remedy by any action by the law, but to take the childe out of the others possession when he seeth his time &c.

Also, when a man in pleading will shew a déde of feoffement made vnto him, or a gift in the tayle, or a lease for terme of life of any landes or tenements, there he shall say by force of which feoffement, gift, or lease, he was seised &c. But where a man will pled a lease or graunt made vnto him of a chattel reall or personel, there he shall say, by force of which he was possessed.

Where

More shall be said of Tenants in common in the Chapter of Releases, and Confirmations.

## Estates vpon Condition.

ESTATES that men haue in landes or tenements be in two maners: that is to say, they haue estate vpon condition in déede, or vpon condition in law. Vpon condition in déede, is as a man by déede indented inferreth an other in fée, reseruing to him and to hys heires yerely a certaine rent, payable at one feast, or at diuers feasts by the yere, vpon condition, that if the rent be behind &c. that it shal be lawful to the feoffour and to his heires to enter into the landes or tenements &c. Or if the land be alyened to an other in fée, to yeld vnto hym certaine rent &c. And if it hap that the rent be behind by a weéke after any day of payment of it, or by a Moneth, or by a halfe yeare after any day of payment, that then it shall be lawfull to the feoffour and to his heires to enter &c. In this case, if the rent be not payed at such a day, or before such a time limitted and specifyed wythin the condition comprysed in the Indenture, then may the feoffour or hys heyres enter into such landes or tenements, and them in hys first estate to haue and to holde, and of this to put the feoffée cleane out: And it is called Estate vpon condition, for this, that the

estate of the feoffee is defeasible, if the condition be not performed.

In the same manner it is if lands be given in the taile, or let for terme of life, or for terme of yeres, vpon such condition &c. But where a feoffement is made of certaine landes, reserving certain rent vpon such condition, that if the rent be behinde, that it shalbe lawful to the feoffor and his heires to enter, and the land to hold till they be satisfied or payed of their rent behinde &c. In this case if the rent be behind, and the feoffor and his heires enter, the feoffee is not excluded cleane out, but the feoffor shall haue and holde the lande, and take the profits till that he bee satisfied of the rent behinde &c. And when hee is satisfied, the feoffee may reenter in the same land, and hold it as hee did before, for in such case the feoffor shall haue it but in maner for a distresse, in the meane time till he be satisfied of the rent &c. though he take the profits in the meane time.

Also, diuers woordes among other there be, that by vertue of them seise make estate vpon condition: One is, this woord of Condition. as A. enfeoffeth B. of certaine lande, to haue and to holde to the same B. and to his heires vppon condition, that the same B. and his heires shall pay, or doe to be paied to the foresaid A. and to his heires yerely such rent &c. In these cases without any more saying the feoffee hath estate vpon condition. Also if the condition were such: Prouided alway, that

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the aforesaid B. paye, or doe to be paide to the aforesaid A. such rent: Or if they were thus, so that the aforesaid B. pay, or doe to be paied such rent. In these cases without any more saying, the feoffee hath estate but vpon condition, so that if he performe not the condition, the feoffor and his heires may enter &c.

Also, other wordes there be in a deede that causeth the tenements to be conditionals, as vppon such a feoffement a rent is reserued to the feoffor &c. and after it is put in the deede, that if it chaunce the aforesaid rent to bee behinde in part or in all &c. that then it shall bee lawfull to the feoffor and to his heires to enter, and this is a deede vpon condition. But there is diuersity betweene the wordes (if it chaunce) &c. and the wordes next aforesaide, for this worde (if it chaunce) &c. is nought worth to such condition: But if it haue these wordes following, that is to say: that it shall be lawfull to the feoffour and to his heyres to enter &c. But in these cases aforesaid, it needeth not by the lawe to put such clause, that is to say, that the feoffor and his heires may enter &c. for this, that they may so doe by force of the wordes aforesaide, because they containe in them selfe in the Lawe a condition, that is to say: that the feoffor and his heires may enter. Yet it is common in all such cases aforesaid, to put such clauses in the deedes, that is to say: if the rent be behind &c. that it shall be lawfull to the same feoffour and his

heires

heires to enter &c. And this is well done to that intent for to declare and expreſſe to the lay men that be not learned in the Law, the maner and the condition of the feoffement &c. As a man ſeiſed of land as of franktenement, let the ſame land to an other by deede indented for terme of yeres, yeelding vnto him certaine rent, it is vſed to be put in the deede, that if the rent be behind at the day of payment, by a Moneth &c. that then it ſhall be lawfull to the leſſour to diſtraine &c. and yet the leſſour may diſtraine of common right for the rent behind &c. though ſuch wordes neuer were ſet in the deede &c.

Alſo, if a feoffement be made vpon ſuch condition, that if the feoffour pay at a certaine day &c. twenty pound of money, that then the feoffour may enter &c. In this caſe the feoffee is called tenant in Mortgage, that is as much to ſay in French, as Mortgage, and in Latin Mortuum vadium, and in Engliſh, a dead pledge. And it ſeemeth that the cauſe why it is called Mortgage, is that it ſtandeth in doubt if the feoffour will pay at the day limitted, ſuch a ſumme or not: And if he pay not, then the land that is put in pledge vpon condition for the payment of the money, is gone from him for euer, and ſo dead as to the tenant &c.

Alſo, as a man may make a feoffement in fee in Mortgage, ſo may a man make a gift of the taile in Mortgage, and a leaſe for terme

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of life, or for terme of yeres in Mortgage. And all such tenants bee tenants in Mortgage after the state that they haue in the lands &c.

Also, if a Feoffement be made in Mortgage, vpon condition that the feoffour shall pay such a summe at such a day &c. as is betweene them by their deede indented accorded and limitted, though the feoffour die before the day of payment &c. yet if the heire of the feoffour pay the summe wythin the day to the feoffee, or proffer him the money, and the feoffee refuseth to receiue it, then may the heire enter into the landes. And yet the condition is, if the feoffour pay such a summe at such a day &c. and not making mention in the condition of any payment to be made by his heire, but for this that the heire hath interest or right in the condition &c. And the intent was but that the money should be payed at such a day set &c. and the feoffee hath no more damage to be payed by the heire, then though he were payed by the father &c. for this cause if the heire pay the money, or tenderth the money at the day set &c. and the other refuseth it, he may well enter. But if a straunger of his owne head that hath no interest &c. would tender and pay the money at the day set, then the feoffee is not bound to receiue it &c.

Also, it is to be had in mind, that in such case where such lawfull tender of the money

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is made, and the feoffée refuſeth to receiue it, wherefore the feoffor or his heires do enter &c. then the feoffée hath no remedy to haue the money by the common law, for this that it ſhall be reputed his owne folly that he refuſed the money when lawfull proffer was made of it vnto him &c.

Alſo, if a feoffement be made with ſuch condition, that if the feoffee pay to the feoffour at ſuch a day betweene them limitted xx.li. that then the feoffée ſhall haue the land to him and to his heires, and if he faile to pay the money at the day &c. that then it ſhall be lawfull to the feoffor or to his heires, to enter &c. And if after, before the day ſet, the feoffée ſelleth the land to another, and therefore make a feoffement vnto him, in this caſe if the ſecond feoffée will tender the ſumme of money at the day ſet to the feoffour, and the feoffour refuſeth it &c. then hath the ſecond feoffée eſtate in the land clerely without condition. And the cauſe is, for that the ſecond feoffée had intereſt in the condition for ſaluation of his tenancy. And in this caſe it ſeemeth that if the firſt feoffée after ſuch ſale of land will tender the money at the day ſet &c. to the feoffour, that ſhall be good ynough for the ſaluation of the eſtate of the ſecond feoffée: for this, that the firſt feoffée was priuie to the condition, and ſo the tender of any of them is good ynough &c.

Alſo if the feffmẽt be made vpon condition, that if the feffor pay a certain ſumme of mony

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to the feoffee: that then it shalbe lawfull to the feoffor and to his heires to enter &c. In this case if the feoffor die before the day of payment, and the heire will tender to the feoffee the money, such tender is voide: for this that the time within which the tender ought to be made, is past. For when the condition is, that if the feoffor pay the money to the feoffee, this is as much to say, that if the feoffor during his life pay the money to the feoffee &c. And when the feoffor dieth, then the time of the tender is past. But otherwise it is where day of payement is limitted, and the feoffor dyeth before the day, then may the heire tender the money, as is aforesaide, for this that the time of the tender was not past by the death of the feoffor. Also it seemeth in such case where the feoffor dyeth before the day of payment, if the executors of the feoffor tender the money to the feoffee at the day of payment, the tender is good enough. And if the feoffee refuse this, the heirs of the feoffor may enter &c. And the cause is for this, that the executors represent the person of their testator &c.

And note well, that in all such cases of condition of paiment of certaine summes in grosse, touching lands or tenements, if lawfull tender be once refused, he that ought to pay the money is therof quited & clerely discharged for euer.

Also, if the feffee in mortgage before the day of paimēt that shalbe made vnto him make his executors & die, & his heire enter into the lands as

as he ought. It seemeth in this case that the feoffor ought to pay the money at the day set to the executors, and not to the heire of the feffée, for this, that the money at the beginning belonged to the feoffée in maner as a dutie. And it shall be vnderstood that the estate was made because of borowing of the mony of the feoffée, or because of another dutie, and for this the paiment shall not be made to the heire of the feffée as it seemeth. But the wordes of the condition may be such, that the payment shall bée made vnto the heire, as if the condition were that the feoffor pay to the feffée, or to his heirs, such a summe at such a day &c. There after the death of the feoffée (if her die before the day limitted) then the paiment ought to bée made to the heire at the day set &c.

Also in such case of a feoffement in Mortgage, a question hath bin demaunded in what place the feoffor is bound to tender the money to the feoffée at the day set &c. And some haue said, that vpon the land so holden in mortgage for this that the condition is dependant vpon the land, and they haue said, that if the feoffor be ready vpon the lande to pay the money at the least or day set, and the feffée be not at that time there, that then the feffor is excluded and discharged of paiment of the money, for this, that no default was in him: But it seemeth to some men that the law is contrary, and the default is in him: for her is bound to séke the feoffée if he be then at that time in any manner

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of place within the Realme of England. As if a man be bound in an obligation of xx.pound vpon condition indorced vpon the obligation, that if he pay to him to whom the obligation is made, at such a day ten pound, that then the Obligation of xx.li. shall lose his force, & shall be holden for nought: In this case it behoueth him that made the obligatiō to seeke him to whom the obligation is made, if he be within England, and at the day set, to tender him the said x.pound &c. And otherwise he forfaiteth the summe of xx.li. comprised within the obligation, and so it seemeth in the other case &c. And though that some haue said that the condition is dependant vpon the land, yet this is not proued that the feasance of the condition to be performed, ought to bee made vpon the land &c. Sith no more then if the condition were, that if the feoffor should doe at such a day &c. an especiall corporall seruice to the feoffee, not naming the place where the corporall seruice should be done: In this case the feoffor ought to doe such corporal seruice at the day limitted to the feoffee, in whatsoeuer place in England that the feoffee bee, if he will haue aduantage of the condition &c. And so it seemeth in that other case. And it seemeth to them, that it shall be more properly said, that the estate of ỹ land is dependant vppon the condition &c. then to say, that the condition is dependant vpon the land. But inquire &c.

But if a feoffement in fee bee made reser-

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ning to the feoffor an annuel rent, and for de-
fault of paiment a reentrie &c. in this case it
needeth not to the tenant to tender the rent
when it is behinde, but onely vpon the land,
for this, that this is a rent going out of the
land, which is rent seche. For if the feoffor be
once seised of his rent, and after he commeth
vpon the lande &c. and the rent is denied him
&c. he may haue an Assise of Nouel disseisin, for
though he may enter because of the condition
broken, yet he may chuse, that is to say, to en-
ter, or to haue an assise. And so is there diuer-
sitie, as to the tender of the rent that is going
out of the land, & of tender of another summe
in grosse, which is not going out of anie land.
And therefore it shall be sure and a good thing
for them that will make such feoffement in
Mortgage, to put and set a special place wher
the monie shalbe paid. And the more speciall
that it is put, the better it is for the feoffor.
As if A. enfeoffe B to haue to him and to his
heires vpon such condition, that if A. pay to
B. in the feast of Saint Michael the archan-
gell next comming, in the cathedrall Church
of S. Paul of London, within fower howers
next before the houre of noone of the same feast,
at the vpmost left of the South doore within the
same Church, or any other certain place with-
in the same Church: that then it shalbe lawful
to the foresaid A. and to his heires to enter &c.
In such case it needeth not to seeke the feoffee
in any other place, but in the place compised

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in the Indenture, nor to be there more longer time then the time specified in the same indenture, for to render or pay the mony to ỹ feoffee:

Also in such case where the place of paymẽt is limitted, the feoffee is not bound to receiue the paiment in none other place, but in the place so limitted. But yet if he receiue the paiment in any other place, that is good enough, and as strong for the feoffor, as if the receyt had bin in the place so limitted &c.

Also in this case of feffement in Mortgage, if the feoffor pay the feoffee an horse, or a cup of siluer, or a ring of golde, or any other such thing in full satisfaction of the money, and the other this receiueth, this is good enough, and as strong as if hee had receiued the summe of money, though the horse, or any of the other thinges be not the twentieth parte worth in value of the summe of money, for this, that the other hath accepted it in pleine and full satisfaction.

Also if a man enfeoffe another in fée vpon condition, that he and his heires shall yéeld to a straunger and his heires a yeerely rent of xx.s. and if he and his heires faile of payment of this, that then it shall be lawful to the feoffor and to his heires to enter, this is a good condition: And yet in this case, though such a yéerely rent be called an annuel rent, this is not properly a rent, for if it shalbe rent it ought to be rent seruice, rent charge, or rent secke, and it is none of them, for if the straunger

were seised of this, & after it were to him denied, he shall neuer haue an assise of this, for this that it illueth not out of any lands, and so the stranger hath no remedy, if any such perely payment be behinde in this case, but that the feoffour and his heires may enter &c. and yet if the feoffour and his heires enter for default of paiment, then such rent is gone for euer. And so such rent is but a paiment set to the tenant and to his heires, that if they will not pay this after the forme of the indenture, that they shall leese their land by the entrie of the feoffour or his heires for default of payment. And in this case it seemeth that the feffée and his heirs ought to seek the strãger and his heires if they be in England, because that no place is limitted where the payment shalbe made, and because that such rent is not going out of any land &c.

And here note well 2. things, one is that no rent that is properly said rent, may be reserued vpon any feoffement, gift, or lease, but onely to the feoffor or to the lessour, or to their heires, and in no maner may be reserued to any strãge person. But if two iointenaunts make a lease by déede indented, reseruing to the one a certaine perely rent, that is good enough to him to whom the rent is reserued, for this that hee is priuie to the lease and not a straunger to this &c. The second thing is, that no entre or reéntre (which is all one) may be reserued nor giuen to any person, but onely to the feoffour

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or to the donour or to the lessour, or to their heires, and such entre may not be alienco nor granted to any person. For if a man let land to another for terme of life by indenture, yelding to the lessor & to his heires certaine rent, & for default of payment a reentre &c. if after ỹ lessor by a deed grant the reuersion of the land to another in fee, and the tenant for terme of life attorneth &c. if the rent after be behind, the grātee of the reuersion may distraine for the rent, for this ỹ the rent is incident to the reuersion, but he may not enter into the land and put out the tenant as the lessour might, or his heires, if the reuersion had been continued in them &c. And in this case the entre is taken away at all times, for the grauntee of the reuersion may not enter. Causa qua supra. See stat. 32. H. 8. ca. 34. if the lease be by deede indented. And the lessour nor his heires may not enter, for if the lessour may enter, then he ought to bee in his first estate &c. and that may not be, for this that he hath put from him the reuersion &c.

Also if there be Lord & tenant, and the tenāt make such a lease for terme of life, yelding to the lessour and to his heirs, such yerely rent, & for default of paiment a reentre &c. if after the lessour die without heire, during the state of the tenaunt for terme of life, by which the reuersion commeth to the Lorde by way of Escheate, and after the rent of the tenāt for terme of life is behinde, the Lorde may distraine the tenant for the rent behinde, but he may not

entr into the land by force of the condition &c. for this that he is not heire to the feffor &c.

Also if land be granted to a man for term of yeres vpon condition, ℔ if he pay to the grantor within ij. yeres xl. markes, that then hee ſhall haue the land to him and to his heires &c. In this caſe if ℔ grantee enter by force of the grāt, and after he payeth to the grantor xl. markes within the ij. yeres, yet he hath nothing in the land, but for terme of two yeres, for this that no liuery of ſeiſin was to him made at the beginning, for if he had had franktenement and fée in this caſe, becauſe he hath perforned the condition, then ſhould he haue franktenement by force of the firſt graunt where no liuery of ſeiſin was made thereof, which ſhoulde bee againſt reaſon &c. But if the grantor had made liuery of ſeiſin to the graunteé by force of the graunt, then hath the graunteé the franktenement, and the fée vpon the performance of the ſame condition.

Also, if lands be granted to a man for terme of fiue yeres, vpon condition that he pay to the grauntor within the firſt ij. yeres xl markes, that then he ſhall haue fée, or els but for terme of v. yeres, & liuery of ſeiſin is made to him by force of the graunt. Now he hath a fée ſimple conditionel &c. and if in this caſe the graunteé pay not to the grantor the xl. markes within the ſame two firſt yeres, thē immediately after the ſame ij. yeres the fée and the franktenemēt is and ſhalbe adiudged to the grantor, for this that

that the graunto3 may not after the two yeres incontinent enter vpon the graunte, fo3 thus that the graunte hath yet title by thre yeres to haue and occupie the land by fo3ce of the same graunt. And so fo3 this, that the condition on part of the graunte is broken, and the graunto3 may not enter, the Law shal put the fee and frankitenement in the graunto3: Fo3 if the graunte in this case make wast, then after the breaking of the condition &c. and after the two yeres the graunto3 shal haue his writ of wast, and this is a good proofe that the reuersion is to him &c. But in such case of feoffements vpon condition where the feoffour may enter lawfully fo3 the condition broken &c. There the feoffour hath the frankitenement before the entre &c.

Also, if a feoffement be made vpon such condition, that the feoffee shall giue the land to the feoffour, and to the wife of the feoffour, to haue and to hold to them and to the heires of their two bodies engendred, and fo3 defaut of such issue, to remaine to the right heires of the feoffour. In this case if the husbande dye lyuing the wife, before estate in the tayle made to him, then ought the feoffee by the law to make estate to the wife, as like to the condition, and as like to the intent of the condition as he may make it, that is to say, to let the land to the wife fo3 terme of life without impechment of wast, the remainder after her decease to the heires engendred of the body of her

husband & heirs, & for default of such issue, the remaynder to the right heires of the husband.

And the cause why the lease shalbe made in this case to the woman sole without impechment of waste, is for this, that the condition is, that the estate shalbe made to the husband and his wife in tayle. And if such estate had ben made in the life of the husband, then after the death of her husband shée hath estate in the taile sole, which estate is without impechmẽt of waste, and so it is reason, that if after a man may make estate to the intent of the condition &c. that he shal make it &c. though that she cannot haue estate in the taile as she might haue had, if the gift in the taile had béen made to the husband & to her in the life of her husbãd &c.

Also in this case if the husband and the wife haue issue and die before the gift in the tayle made vnto them &c. then ought the feoffée to make estate to the issue, and to the heirs of the father and mother engendred, and for default of such issue &c. the remaynder to the right heires of the husband &c. And the same law is in other cases semblable. And if such a feoffour will not make such estate when he is reasonably required by them that ought to haue estate by force of the condition &c. then may the feoffour and his heires enter &c.

Also, if a feoffement be made vpon condition, that the feoffée shall enfeoffe many men, to haue and to hold, to them and to their heires for euer, and all they that ought to haue

haue estate, die before any estate made vnto them, then ought the feoffee to make the estate to the heires of him that survyueth of them, to haue and to hold to him, and to the heires of him that survyued &c.

Also, if a feoffement be made vpon condition to enfeoffe another, or to giue in the tayle to another &c. if the feoffee before the performing of the cõdition enfeoffe a strange person, or make a leas for terme of life, then may the feoffour and his heires enter &c. for this, that he hath disabled himselfe to performe the condition, insomuch that he made estate to another &c. In such maner it is, if the feffee before ỹ condition performed, let the same land to a stranger for terme of yeres: In this case the feoffor or his heires may enter &c. for this that the feoffee hath disabled himselfe to make estate of the tenements according to that, that was in the tenements when the estate thereof was made vnto him, for if he will make estate according to the condition &c. then may the feffee for term of yeres enter & put out him to whom the estate is made &c. and to occupy this during his terme. And many haue said, that if such a feffemẽt be made to a man sole vpon the same condition, and before that he hath performed the condition he taketh a wife, then the feoffor or his heire may incontinent enter, for this that if he haue made estate according to the condition, & after dieth, his wife shalbe endowed, & may recouer her dowrie by a writ of

Dower &c. And so by taking of a wife, the tenements be put in other plite then they were at the time of the feoffement vpon condition, for this, that no such woman was dowable, nor should be endowed by the law &c.

In the same maner it is, if the feoffor charge the land by his deede of rent charge before the performing of the condition, or be bound in a statute Staple, or statute Marchant, that in such cases, the feoffor & his heires may enter, Causa qua supra. For whosoeuer commeth to the tenements by the feoffement of the feoffé, then the tenements must be lyable, and be put in execution by force of the statute aforesaid. But when the feoffor or his heires, for the causes aforesaid haue entred so as they ought, as it séemeth &c. Then all such things that before such entre may trouble or incumber the tenements so gyuen vpon condition, as touching the same tenemét be vtterly defeated &c.

Also, if a man make a deede of feoffement to an other, & in the deede is no condition &c. And when the feoffor will make to him liuery of seisin by force of the same deede, he maketh liuery of seisin vpon certaine conditions &c. In this case nothing of the tenements passeth by the deed, for this, that the condition is not compriséd in the deede, & the feoffement is of such force as if no such deede had been therof made &c.

Also if a feoffement be made vpon such condition, that the feoffé shall not alien the land to any man, this condition is void, for this, that when

when a man is infeoffed in landes or tenements, he hath power to alyen them to some person by the law. For if such condition should be good, then the condition putteth him out of all the power that the law giueth, which should be against reason, and for this such condition is voide. But if the condition be such, that the feoffee shal not alien to one such, naming his name, or to any of his heires, or his issues &c. or such other like, the which condition taketh not away all the power of alienation of the feoffee &c. then such condition is good.

Also, if tenements be gyuen in the tayle vpon such condition, that the tenant in the tayle, nor his heires &c. shall not alien in fee, nor in taile, nor for terme of an others life, but for their owne lyues &c. such alienation and condition is good: And the cause is for this, that when he maketh such alienation and discontinuance, he doth contrarie to the intent, for which the Statute of westminster the second was made, by which estatute, the estates in the tayle be ordeyned, for it is proued by the wordes compyled in the same estature, that the intent of the making of the same statute was, that the will of the donor in such cases should be obserued. And when tenant in the taile maketh such discontinuance, he doth the contrary to that &c. And also in estates in the taile of any tenements when the reuersion of the fee simple is in another person, when such discontinuance

tinuance is made, then the fee simple in the reuersion, or the fee simple in the remainder is discontinued, and for that that the tenāt in the taile shall do no such thing against right, such conditions are good, as is aforesaid &c.

Also a man may giue land in the tayle vpon such condition, that if the tenant in the tayle or his heires alien in fee, or in taile, or for terme of an others life &c. And also, that if all the issues comming of the tenant in the taile be dead without issue, that then it shalbe lawfull to the donor and to his heires to enter &c. and by such way the right of the taile may be saued after such discontinuance to the issue in the taile if there be any, so that by way of entre of the donor or of his heires, the taile shall not be defeated by such condition, and yet if the tenant in the taile in this case, or his heirs make any discontinuance &c. he in the reuersion or his heirs after this that the tail is determined for default of issue &c. may enter into the land by force of ỹ same condition, & shal not be driuen to sue a writ of Formdon in the reuersion.

Also, a man may not plead in an action that estate was made in fee, in the taile, or for terme of life vpon condition, but if he vouch a record therof, or shew a writing vnder seale, prouing the same condition, for it is a common erudition and learning, that a man by pleading shal not defeat any estate of frank tenemēt by force of any such condition, vnles he shew the proufe of such condition in writing &c. except it be in

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some especiall case, but of chattels reals, as of a lease made for terme of yeres, or of grants of wardes made by wardens in chiualrie, and of such other &c. A man may plead that such gifts or graunts were made vpon condition &c. without shewing of any writing of condition. And in the same maner a man may do of gifts and graunts of chattels personels, and of contractes personels &c.

Also, though that a man in some action may not plead an action that toucheth and concerneth franktenement without shewing of writing thereof, as it is afore said, yet a man may be holpen vpon such condition by the verdict of xij. men taken at large in Assise of disseisin, or in some other action where the Iustices will take the verdict of the twelue Iurours at large. As put the case that a man seised of certaine land in fée, letteth the same land for terme of life without déde, vpon condition to yéld to the lessour a certaine rent, and for default of payment a reéntre &c. by force of which the lessée is seised as of a franktenement, and after the rent is behind, by which the lessour entreth into the land, and after the lessée arraygneth an Assise of Nouel disseisin of the land against the lessor, the which pleadeth that he doth no wrong, ne no disseisin, and vpon this the Assise is taken.

In this case the recognitors of the Assise may say & yéld to the Iustices their verdict at large vpon all the matter, as to say that the

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defendant was ſeiſed, and ſo ſeiſed, let the ſame land to the plaintife for terme of his life, to yeld to the leſſor ſuch annuel rent payable at ſuch a feaſt, & vpon ſuch condition, that if the rent be behind at any ſuch feaſt, that it ought to be paied, that then it ſhalbe lawful to ỹ leſſor to enter &c. by force of which leaſe the plaintife was ſeiſed in his demeſne as of franktenemẽt, & after the rent was behind at ſuch a feaſt in ſuch a yere &c. for which the leſſor entred into the land vpon the poſſeſſion of the leſſee, and prayeth the diſcretion of the Juſtices, if this be a diſſeiſin done to the plaintife or not. And then for this that it appeareth to the Juſtices, that this was no diſſeiſin done to the plaintif, inſomuch that, that entre of the leſſor was lawfull vpon him, the Juſtices ought to giue iudgement that the plaintif ſhal take nothing by his writ of Aſsiſe. And ſo in ſuch caſe the leſſor ſhalbe holpen, & yet no writing was euer made of the condition, for aſwel as the Iurors may haue knowledge of the leaſe, in the ſame maner may they haue knowledg of the condition rehearſed in the leaſe. In the ſame maner is it of a feoffement in fée, or a gift in the taile vpon condition, though neuer writing were made therof &c. And as it is ſaid of a verdict at large in Aſsiſe, in ỹ ſame maner it is of a writ of Entre founded vpon diſſeiſin, & in all other actions where the Juſtices will take a verdict at large, there where the verdict at large is made, the nature of ỹ matteris put in the iſſue.

Alſo

Also in such case where the enquest may say their verdict at large, if they wil take vpon thē the knowledge of the Lawe vpon the matter, they may say their verdict general, as it is put in their charge, as in the case aforesaid, they may well say that the lessor disseised not the lessée if they will &c.

Also in the same case if the case were such that after this that the lessor had entred for default of payment &c. that the lessée had entred vpon the lessor and him disseised. In this case if the lessor arraigneth an assise against the lessée, the lessée may barre him of his assise, for he may plede against him in barre, how the lessor that is plaintife made a lease to the defendant for terme of life, sauing the reuersion to the plaintife, the which is a good plée in barre, in so much that he knowledgeth the reuersion to be to the plaintife, and in this case he hath no matter to helpe him, but the condition made vpon the lease, and that he may not plede, for that he hath no writing, and insomuch that he may not aunswere to the barre, he shall bée barred. And so in this case ye may sée, that a man is seised, and he shal haue assise, and yet if the lessée bee plaintife, and the lessor defendant he shall barre the lessée by verdict of the assise. But in this case where the lessée is defendāt, if he will not plead the said plée in barre, but plede no wrong ne disseisin, then the lessor shal recouer by assise, Causa qua supra.

Also because such conditions bée most com-

monly

monly put and specified in deeds indēted, some little thing shalbe said here (to thee my sonne) of indentures, & of a deed Poll conteining conditions. And it is to wit, ꝙ if the indenture be bipertite or tripartite, or quadripartite, all the parts of the indenture be but one deede in the law, and euery part of the Indēture is of him selfe of as great force and effect, as al the parts togither. And the making of Indentures is in two maners. One is to make them in the third person, another maner is to make thē in the first person. The making of the iij. person is as in such forme. This Indēture made betweēn: A. of B. of the one part, & C. of D. of ꝙ other part, witnesseth, ꝙ the foresaid A. of B. hath giuen & granted, and by this present deed indēted, hath cōfirmed to the foresaid C. of D. such land, to haue &c. vpon ꝙ condition &c. In witnes whereof the parties beforesaid interchangeably haue put to their seals: or els thus In witnes whereof to the one part of this indēture remaining wt the said C. of D. the foresaid A. of B. hath put to his seal, & to the other part of the said indenture remaining with the said A. of B. the said C. of D. hath put to his seale giuē &c. Such indentures are called indentures made in the third person, for this ꝙ the verbes be in the third person, & such forme of indenture is the more sure making, for that it is more commonly vsed. The making of indentures in the first person is of such fourme:

To all true Christian people to whome this

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preſent writing indented ſhall come, A. of B. greting in our lord euerlaſting. Know ye me to haue giuen and grāted, and by this my preſent deed indented to haue confirmed to C. of D. ſuch land &c. Or els thus: Know all men yͤ be preſent, and them that be to come, that I A. of B. haue giuen and graunted, & by this my preſent deed indented haue confirmed to C. of D. ſuch land &c. to haue &c. vpon the condition following: In witnes whereof aſwell I the ſaid A. of B. as the foreſaid C. of D. to theſe Indentures interchangeably haue put to our ſeales: or els thus. In witnes whereof to one part of this indenture I haue put to my ſeale, and to the other part of the ſame indenture the foreſaid C. of D. hath put to his ſeale &c.

And it ſeemeth that ſuch an indenture made in the firſt perſon, is as good in the law as the indenture made in the third perſon, whē both parties haue thereto put their ſeales, for in the Indenture made in the third perſon or in the firſt perſon, if mention be made that the grantour hath ſet his ſeale onely, and not the grantee, then is the indenture onely the deede of the grauntor. But where mention is made that the graunter hath ſet his ſeale to the Indenture &c. then is the indenture as well the deed of the grantor, as the deed of the grauntee, and thus it is the deed of both, and alſo euery part of the indenture is the deede of both parties in ſuch caſe &c.

Alſo if eſtate bee made by Indenture to a man

tenaunt for terme of his life, the remainder to another in fee vppon condition &c. and if the tenaunt for terme of life hath set his seale to one part of the Indenture, and after dyeth, and he in the remainder &c. entreth by force of his remainder, in this case he is holden to p'forme all the conditions comprised within the Indenture, as the tenaunt for terme of life ought to doe in his life, and yet he in the remainder neuer sealed any part of the Indenture: What the cause is, that insomuch that hee entreth and agreeth to haue the land by force of the indenture, he is holden to perfourme the condition within the Indenture, if he will haue the land &c.

Also if a feoffement be made by deede Poll vpon condition &c. And for this that the condition is not perfourmed, the feoffor entreth and happeth the possession of the deede Poll, if the lessee bring an action of that entrie against the feoffour, it hath been a question, if the lessour may pleade the condition &c. by the deede Poll against the feoffee: And some haue saide nay, insomuch that it seemeth vnto them, that a deede Poll, and the property of the same deed appertaineth to him to whome the deede is made, and not to him that made the deede, and insomuch that such a deede appertayneth not to the feoffor, it seemeth to them that hee may not pleade this deede &c. And other haue saide the contrary, and haue shewed diuers causes. One is, if the case bee such, that in the action

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betweene them the feoffee plead the ſame deede, and ſhew this to the Court: In this caſe in ſo much that the deede is in the court, the feoffor may ſhew to the court, how in the deede be diuers conditions to be performed of the part of the feoffee, & for that that they be not performed, he entred &c. and thereto he ſhalbe received: by the ſame reaſon when the feoffor hath the deed in hand, & ſheweth it to the court, he ſhalbe well received to pleade of this &c. And namely when the feoffor is priuie to the deede, for he ought to be priuie to the deede when he made the deed.

Alſo if two men make or doe a treſpaſs to an other, the which releaſeth to one of them by his deede all actions perſonels &c. Notwithſtanding hee ſueth an action of Treſpaſſe againſt the other, the defendant may well ſhew that the treſpaſs was done by him and another his fellowe, and that the plaintife by the deede that he ſhewed forth releaſeth to his fellowe all actions perſonels, and yet ſuch deede appertaineth to his fellowe, and not vnto him, but for this that he may haue aduantage by the deede, if he will ſhewe the deede to the Court, he may well pleade &c. Therefore by the ſame reaſon in the other caſe, when the feoffor ought to haue aduantage by the condition compriſed within the deed Well.

Alſo, if the feoffee gaue or granted the deede Bell to the feoffor, ſuch grant ſhalbe good, and then the deede, and the property of the deede appertaineth to the feoffour. And when the

seeketh hath the deede in hand, and pleadeth it
in the court, it shall be rather vnderstood that
he came to the deede by a lawfull meane then
by a vitious meane. And so it seemeth, they
may well plead such a deede poll, that compre-
heedeth condition &c. if he haue the deed in hand
&c. Ideo semper quære de dubiis, quia per rati-
ones peruenitur ad legis rationem.

Estates that men haue vpon condition in
the lawe, be such estates that haue a condition
in the law annexed to them, though it be not
specified in writting, so as a man grant by his
deed to another the office of a Parkership of a
Parke, to haue and to occupy the same office
for terme of his life, the estate that he hath in
the office, is vpon condition in the lawe, that
is to say, that the Parker well and truly shall
keepe the Parke, and do that, that to the office
appertaineth to doe: or otherwise, that it shall
be lawfull to the grantor and to his heires to
put him out, and to graunt that to another if
he will &c. And such condition as is vnderstood
by the lawe to bee annexed to some thing, is as
strong as if the condition were set or put in
writting. In the same maner it is of graunts
of offices of Stewardes, Constables, Bedels,
Bailifes, and other officers. But if such offices
be granted to a man to haue and to occupy by
him or by his deputy, then if the office be occu-
pied by him or by his deputy as it ought by the
lawe to be occupied, this sufficeth for him, or
els the grantor or his heirs may put him out

as

as is alleaſed.

Alſo, eſtates of landes & tenements may be vpon condition in the law, though that vpon the eſtate made, there was no reherſal made of the condition. As put the caſe that a leaſe be made to the huſband and his wife, to haue & to hold to thē during the couerture betweēn thē, in this caſe they haue eſtate for terme of their two liues vpon condition in the law, that is to ſay, if one of them die, or if diuorce be made betweēn them, that then it ſhall be lawfull to the leſſor & his heires to enter &c. and for they haue eſtate for terme of their two liues, it is proued thus: Euery man that hath eſtate or franketenemēt in any landes or tenemēts, either he hath eſtate in fee, or in fee taile, or for terme of life, or for terme of another's life, and yet by ſuch leaſe they haue franketenemēt, but they haue not the grount, fee, nor taile, nor for terme of another's life, Ergo they haue eſtate for terme of their two liues, but this is vpon condition in the law in forme aforeſaid. And in this caſe if they make waſt, the leſſor ſhall haue againſt thē a writ of waſt, ſuppoſing by his writ, Quod tenet ad terminū vitæ &c. but in his plee, he ſhall declare how and in what maner the leaſe was made. In the ſame maner it is, if an abbot make a leaſe to a mā, to haue & to hold during the time that the leſſor is abbot: In this caſe the leſſee hath eſtate for term of his owne life, but this is vpō cōditiō in law, that is to ſay, that if the Abbot die, or reſigne, or be depoſed, it ſhall be lawfull

to his ſucceſſors to enter &c.

Alſo, a man may ſee in the booke of Aſſiſes, An. 38. E. 3. a plee of aſſiſe in this forme that enſueth. Aſſiſe of Nouel diſſeiſin was ſometime brought againſt one B. that pleadeth to the aſſiſe, & was found by verdict that the anneſtor of the plaintife deuiſed the tenements to be ſold by ſ defendant that was his executor to make diſtribution of the money for his ſoule: And it was found, that a while after the death of the teſtator tendred him certaine ſummes of money for the tenements, but not to the value, & that the executor after he ſide the tenementes in his owne hand by ſundrie yeers, to the intent to haue ſold the tenements more dearer to ſome other: And it was found that he had all the whyle after taken the profites of the tenements to his owne vſe, without any thing doing for the ſoule of the dead. ¶ Mombray, the executor in ſuch caſe is holden by the Lawe to make ſuch ſale as ſome as he may after the death of the teſtator, and it is found that he refuſed to make the ſale, & ſo the default was in him: And alſo by force of the deuiſe he was holden to haue put all the profits of the ſaid tenementes to the vſe of the dead, and it is found that he hath taken them to his owne vſe, and ſo another default is in him, wherefore it was iudged that the plaintif ſhould recouer &c. And ſo it appeareth in the ſaid iudgement that by force of the ſaid deuiſe the executor had none eſtate at perſent in the tenements, but vpon condition in the laſe &c.

And

And in such cases it needeth not to have shewed any deed, reherſing the conditions &c. Ex paucis dictis intendere plurima poſſis. More shalbe ſaid of conditions in the chapter of Diſcents that take away entre, & in the chapter of Releaſes, & in the chapter of Diſcontinuance.

## Diſcent.

DIſcents that take away entres be in two maners: that is to ſay, where the diſcent is in fee or in fee taile. Diſcent in fee that taketh away entre is, if a man ſeiſed of certain lands or tenements, is diſſeiſed, & the diſſeiſor hath iſſue and dyeth of ſuch eſtate ſeiſed: Now the tenements diſcend to the iſſue of the diſſeiſor by courſe of the law as heire vnto him.

And for this that the law putteth the lands or tenements vpon the iſſue, & the iſſue commeth to the tenements by courſe of the Law, and not of his owne deede, the entre of the diſſeiſee is taken away, and is thereof put to his writ of Entre vpon Diſſeiſin againſt the heire of the diſſeiſor to recouer the land.

Diſcent in the tayle that taketh away entre is, if a man be diſſeiſed, and the diſſeiſor giueth the ſame land to an other in the taile, and the tenant in the taile hath iſſue and dyeth ſeyſed of ſuch eſtate, and the iſſue entreth, in this caſe the entre of the diſſeiſee is taken away, and he is put to ſue againſt the iſſue of the tenant in the taile, a writ of Entre vpon

Litt. ſec.

And note well that in ſuch diſcents that take away entries, it behoueth that a man die ſeiſed in his demeine as in fée taile, for dying ſeiſed for terme of life, or for terme of another's life, ſhall neuer take away the entrie &c.

Item, a diſcent of reuerſion or of remainder ſhall neuer take away entrie &c. ſo that in ſuch caſes that take away entries by force of diſcents, it behoueth that he that dieth ſeiſed haue fée and franktenement at the time of his dying, or els ſuch diſcent taketh not away entrie.

Alſo as it is ſaid of diſcents & diſcend to the time of him that dyeth ſeiſed &c. the ſame law is ſuher they haue no iſſu, but & tenemẽts diſcẽd to & brother, as to the father, or to the vncle, or to ſome other cozen of him & dieth ſeiſed &c.

Alſo, if there be Lord and tenant, and the tenant be diſſeiſed, and the diſſeiſor alieneth to another in fée, & the aliené dyeth without heire, and the Lord entreth as in his eſcheat, In this caſe the diſſeiſée may enter vpon the Lord, for this that the Lord commeth not to the land by diſcent but by eſcheat.

Alſo, if a man ſeiſed of certain land in fée, or in fée taile vpon condition to paie certein rent, or vpon other condition, though that ſuch tenãt ſeiſed in fée, or in fée taile die ſeiſed, yet if & condition be broken in their life, or after their deceaſe &c. this taketh not away the entrie of the feoffor, nor of the donor, or of their heirs. for this that the tenãcy is charged with the condition.

dition, and the estate of the tenancy is condi-
tionall in whose handes soeuer the tenancy
shall come &c.

Also, if such a tenant upon condition be dis-
seised, & ỹ disseisor die therof seised, & the land
discendeth to the heir of ỹ disseisor, now ỹ entre
of the tenant upon condition that was disseised
is taken away, but if the condition be broken
&c. then may the seisin of the donor & made the
estate or their heirs enter &c. Causa qua supra.

Also if a disseisee die seised, and his heir is en-
ter &c. the which endoweth the wife of the dis-
seisor of the third part of the tenements, in this
case, as in the third that is assigned to the wife
in dower, incontinent anon after that the wife
entreth and hath possession of the same third
part, the disseisee may lawfully enter upon the
possession of his wife in the same third part.
And the cause is for this, that when the wife
hath her dower, she shalbe abridged in rather
immediatly by her husband then by the heirs,
& so as to the franktenement of the same third
part, the discent is defeated. And so ye may see
how before the dowment the disseisee might
not enter in any part &c. and after the dow-
ment he may enter upon the wife, and yet he
may not enter upon the other two parts that
the heire of the disseisor hath by discent &c.

Also, if a woman be seised of land in fee,
wherein I haue right and title to enter, if the
woman take an husband and haue issue be-
tweene them, and after the wife dyeth seised,

and after that the husband dyeth, and the issue entreth &c. in this case I may enter upon the possession of the issue, for this, that the issue commeth not to the tenements immediatly by discent after the death of his mother, An. 9 H. 7. fol. 24. it is holden contrarie.

Also, if a disseisor disseise his father, & the father entreth & dyeth of such estate seised, by which the tenements discend to the disseisor, as to the sonne and heire &c. In this case the disseisee may well enter upon the disseisor, notwithstanding the discent, for this, that as to the disseisin, the disseisor shalbe iudged in but as the disseisor, notwithstanding the discent.

Also, if a man seised of certain land in his demeane as of fee, hath issue two sonnes & dyeth, & the ponger sonne entreth by abatement in the land, the which hath issue, and of this dyeth seised, and the tenements discend to the issue, and the issue entreth into the land: In this case the elder sonne or his heires may enter by the law upon the issue of the ponger sonne, notwithstanding the discent, for this, that when the ponger sonne abated in the land after the death of his father, before any entrie of the elder, the law intendeth that he entreth in clayming as heire unto his father, and for this, that the elder brother claymeth by the same title, that is to say, as heire unto his father, he & his heires may enter upon the issue of the ponger brother, notwithstanding the discent &c. for this, that they claime by one title

title

title. And in the ſame maner it ſhalbe if there be many diſcents from one iſſue to an other iſſue of the yonger ſonne &c. But in ſuch caſe, if the father were ſeiſed of certain lands in fee, and hath iſſue two ſonnes and dyeth, and the elder ſonne entreth and is ſeiſed &c. And after the yonger ſonne diſſeiſeth him, by which diſſeiſin he is ſeiſed of fee, and hath iſſue, and of ſuch eſtate dyeth ſeiſed, then the elder brother may not enter, but is put to his writ of Entre vpon diſceiſin for to recouer the land. And the cauſe is for this, that the yonger brother commeth to the tenements by a wrong diſſeiſin made vnto his elder brother, & for that wrong the law may not intend that he claymeth as heire to his father, no more then if a ſtraunge perſon had diſſeiſed the elder brother that neuer had any title &c. And ſo may yee ſee the diuerſitie, where the yonger brother entreth after the death of his father, before any entrie made by the elder brother in ſuch caſe &c. And where the elder brother entreth after the death of his father, & is diſſeiſed by the yonger brother &c. In the ſame maner if a man ſeiſed of certain land in fee, hath iſſue two daughters, & dieth, & the elder daughter entreth in the land, claiming all the land to her, and thereof onely taketh the profits, and hath iſſue & dieth ſeiſed, by which her iſſue entreth, which iſſue hath iſſue and dyeth ſeiſed, and the ſecond iſſue entreth &c. & ſic vltra, yet the yonger daughter and her iſſue, as to the halfe may enter vpon

every

wife after that the husband dyeth, and the issue entreth &c. in this case I may enter upon the possession of the issue, for this, that the issue commeth not to the tenements immediatly by discent after the death of his mother, An. 9. H. 7. fol. 24. it is holden contrarie.

Also, if a disseisor disseise his father, & the father entreth & dyeth of such estate seised, by which the tenements discend to the disseisor, as to the sonne and heire &c. In this case the disseisee may well enter upon the disseisor, notwithstanding the discent, for this, that as to the disseisin, the disseisor shalbe iudged in but as the disseisor, notwithstanding the discent.

Also, if a man seised of certain land in his demeane as of fee, hath issue two sonnes & dyeth, & the ponger sonne entreth by abatement in the land, the elder hath issue, and of this dyeth seised, and the tenements discend to the issue, and the issue entreth into the land: In this case the elder sonne or his heires may enter by the law upon the issue of the ponger sonne, notwithstanding the discent, for this, that when the ponger sonne abated in the land after the death of his father, before any entrie of the elder, the law intendeth that he entreth in claiming as heire unto his father, and for this that the elder brother claymeth by the same title, that is to say, as heire unto his father, he & his heires may enter upon the issue of the ponger brother, notwithstanding the discent &c. for this, that they claime by one title

title

iſſue. And in the ſame maner it ſhalbe if there be many diſcents from one iſſue to an other iſſue of the yonger ſonne &c. But in ſuch caſe, if the father were ſeiſed of certain lands in fee, and hath iſſue two ſonnes and dyeth, and the elder ſonne entreth and is ſeiſed &c. And after the yonger ſonne diſſeiſeth him, by which diſſeiſin he is ſeiſed of fee, and hath iſſue, and of ſuch eſtate dyeth ſeiſed, then the elder brother may not enter, but is put to his writ of Entre vpon diſſeiſin for to recouer the land. And the cauſe is for this, that the yonger brother commeth to the tenements by a wrong mere iſſin made vnto his elder brother, & for that wrong the law may not intend that he claymeth as heire to his father, no more then if a ſtraunge perſon had diſſeiſed the elder brother that neuer had any title &c. And ſo may yee ſee the diuerſitie, where the yonger brother entreth after the death of his father, before any entrie made by the elder brother in ſuch caſe &c. And where the elder brother entreth after the death of his father, & is diſſeiſed by the yonger brother &c. In the ſame maner if a man ſeiſed of certain land in fee, hath iſſue two daughters, & dieth, & the elder daughter entreth in the land, claiming all the land to her, and thereof onely taketh the profits, and hath iſſue & dieth ſeiſed, by which her iſſue entreth, which iſſue hath iſſue and dyeth ſeiſed, and the ſecond iſſue entreth &c. & ſic vltra, yet the yonger daughter and her iſſue, are to the halfe may enter vpon

every

entry ille of the elder daughter, notwithstanding such discent, for this that they claime by one seisin title &c. But in such case if both two sisters come into the land to enter after the death of their father, & there of twey seised, and after the elder sister therof disseised the yonger sister of that, that to her belongeth, & thereof is seised in fee, & hath issue, & of such estate dyeth seised, by which the tenements discend to the issue of the elder sister, then the yonger sister or her heires may not enter &c. Causa qua supra.

Also, if a man seised of certaine land hath issue two sonnes, and the elder brother is bastard, and the yonger brother mulier, and the father dyeth, and the bastard entreth and claimeth as heire unto his father, and occupyeth the land all his life without any entre made upon him by the mulier, and the bastard hath issue and dyeth of such estate seised in fee, and the land discendeth to his issue, and his issue entreth &c. in this case the mulier is without remedy, for he may not enter, nor he shall have no action for to recover the land, for this that it is an ancient law in such case ried. But it hath been an opinion of some men, that, that shall be understood where the father hath a sonne a bastard by a woman, and after he weddeth the same woman, and after the espousall he hath issue by the same woman a sonne or a daughter mulier, & the father dyeth &c. if such a bastard enter &c. and hath issue, and dyeth seised &c. Then shall the issue of such a bastard

have

hym the land clerely as hym as it is discended &c. And not any other bastard borne of the mother that was not espoused to his father, and this is a good and reasonable opinion; For such a bastard borne before the espousells solemnized betweene his father and his mother by the law of holy Church, is Mulier, though that by the law of the land he is a bastard borne, and so he hath colour of entre as heire to his father, for this that he is by our law Mulier, that is to say, by the law of holy Church. But otherwise it is of a bastard that hath no manner of colour to enter as heire, insomuch that he may not in no law be said Mulier &c. for such a bastard is said Quasi nullius filius: but in such case afore said, where the bastard entreth after the death of his father, and the Mulier putteth hym out, and after the bastard disseisith the Mulier, and hath issue, and dyeth seysed, and the issue entreth, then the Mulier may haue a Writ of Entre vpon Disseisin against the issue of the bastard, and recouer the land &c. And so may ye se the diuersitie where such a bastard continueth his possession all his lyfe without any interruption, and where the Mulier entreth and interrupted the possession of such a bastard.

Also if a child vnder age haue title & cause to enter into any lands or tenements vpon another & is suffred in fee, or in fee taile of the same lands or tenements, & such a one & is so seised de

of

of such estate so seysed, and the tenements discend to his issue during the time that the child is within age, such discent shall not toll the entre of the child, but he may enter upon the issue that is in by discent &c. for this that no laches shalbe adiudged in a child within age in such case &c.

Also, if the husband and his wife, as in right of the wife have title and right to enter in the tenements that another hath in fee, or in fee taile, and such a fenant dieth seised &c. In such case the entre of ye husband is take away upon the heire that is in by discent. But if the husband die, then the wife may well enter upon the issue by discent, for this that the laches of the husband shall not turne to the wife and to her heirs in prejudice nor in damage in such case, but that the wife & her heires may well enter where such discent is during the coverture &c.

Also, if a man that is not of whole minde, that is to say in latin, Qui non est compos mentis, hath cause to enter in any such tenements, if such discent vt supra be had in his life during the time that he was out of his mind, & after die, his heires may well enter upon him that is in by discent. And in this may ye see a case that the heir may enter, & yet his ancestor that had ye same title may not enter, for he that was out of his mind at the time of such discent, if he well enter after such a discent, & action upon this be sued against him, he hath nothing for him to plead, or to help him, but say ye he was

out

out of mind at the time of such discent &c. And he shal not be receiued to say this, for this that no man of full age shall be receiued in any plee by the law to dilait or disable his owne person. But the heyre may well disable the person of his ancestor for aduantage of the heire in such case, for this, that the lacheg may be abridged by the lawe in him that hath no discretion in such case. And if such a man out of his minde make a feoffement &c. he may not enter, ne haue a writ called Dum non fuit compos mentis &c. Casus qua supra. But after his death his heire may wel enter or haue the same writ Dum non fuit compos mentis at his election &c.

Also, if I be disseised by a childe within age that alieneth in fee, and the alienee dieth seised, and the tenements discend to his heire, the child being within age, mine entre is taken away. But if the child within age enter vpon the heire that is in by discent, as he well may, for this that the discent was during his nonage, then I may wel enter vpon the disseisor, for, for this, that [illegible] entre he hath defeated and annulled the discent.

And in the same manner it is where I am seised, & the disseisor maketh a feoffement in fee vpon condition &c. and the feoffee dieth of such estate seised &c. I may not enter vpon ? heire of the feoffee: But if the condition be broken so that by such cause the feoffor entreth vpon the heire, now may I wel enter, for this that [illegible] the feoffee or his heires enter for the condition broken,

broken, the discent is vtterly defeated.

Also, if I be disseised, and the disseisor hath issue and entreth into Religion, by force of which the landes discend to his issue, in this case I may well enter vpon the issue, and yet there was a discent: But for this that such discent commeth to the issue by the fathers deede, that is to say, for this that he entred into religion &c. and his discent commeth not to him by the deed of God, that is to say, by death &c. mine entrie is congeable and lawfull, for if I arraigne an assise of Nouel disseisin against my disseisor, though he after enter into Religion, this shall not abate my writ: But my writ this notwithstanding, shall abide in his force and strength, and my recouery against him shall be good. By the same reason the discent that came to his issue by his owne deed may not put me from mine entrie &c.

Also, if I let to a man certaine landes for terme of xx. yeeres, and another disseiseth me, and putteth out the terme, and dyeth seised, and the tenements discend vpon his heire, I may not enter, and yet the lesse for terme of yeres may well enter, for this that by his entrie hee putteth not out the heire that is in by discent from the franktenement that vnto him discended, but only claymeth to haue the tenements for terme of yeres, the which is no expulsing of the franktenement of the heire, that is in by discent: But otherwise it is where my tenaunt for terme of life is disseised

&c.

Fr. Cause qua supra &c.

Also, it is said that if a man bee seised of tenements in fee by occupation in time of warr, and dyeth thereof seised in time of warr, and the tenements discend to his heir, such discent putteth out no man of his entre. And of this a man may see a plee in a writ of Ayel, Ass. 7. E. 2.

Also, that no dying seised (where all the tenements come to another by succession) shall take away the entrie of any person &c. As of Prelates, Abbots, Priors, Deanes, or Parsons of Churches, &c. though that there were no successors, this putteth no man from his entrie &c. More shall be said of discents in the Chapter of Continuall claime &c. Vide stat. 32. H. 8. ca. 33.

## Continuall claime.

COntinual claim is, where a man hath right and title to enter into any lands or tenements whereof another is seised in fee, or in fee taile, if hee that hath title to enter make continuall claime to the lands and tenements, before the dying seised of him that holdeth the tenements: Then though such a tenaunt dye thereof seysed, and the landes and tenements discend to his heire, yet may hee that hath made such claime, or his heires, enter into the lands and tenements discended, because of the continuall claime made, notwithstanding such discent. As in case a man be disseised, and the disseisee

make

maketh continuall claime to the tenements in the life of the disseisor, though the disseisor die seised in fee, and the land discendeth vnto his heires, yet may the disseisee enter vpon the possession of the heire, notwithstanding such discent.

In the same maner it is, if tenant for terme of life alien in fee, he in the reuersion, or he in the remainder may enter vpon the alienee. And if such alienee die seised of such estate without continuall claime made to the tenements before the dying seised of the alienee, & the tenements because of the dying seised of the alienee discend vnto the heire of the alienee, then may not he in the reuersion, nor he in the remainder enter. But if he in the reuersion, or he in the remainder that hath cause to enter vpon the alienee, made continuall claime to the tenements before the dying seised of the alienee, then such a man may enter after the death of the alienee, as well as he might in his life &c.

Also, if lands bee let vnto a man for terme of his life, the remainder vnto another for terme of life, the remainder vnto the third in fee, if the tenant for terme of life alien to another in fee, and he in the remainder for terme of life maketh continuall claime vnto the lands before the dying seised of the alienee, and after the alienee dieth &c. and after he in the remainder for terme of life dieth before any entre made by him: In this case hee in the remainder in fee may enter vpon the heire of the alienee, because

because of continuall claime made by him that had the remainder for term of life, for this that such right that he hath to enter, shall goe and remaine to him in the remainder after him, insomuch that he in the remainder in fee may not enter vpon the alienee in fee during the life of him in the remainder for term of life, and because he might not make continuall claime, for none may make continuall claime but when he hath title to enter. But it is to be shewed to thee my child how & in what maner continuall claime shalbe made, and to learn this 3. things there be to be vnderstood. The first thing is, if a man haue cause to enter in any landes or tenementes in diuers townes within one shire, if he enter in any parcell of the landes or tenements that be in one towne, in the name of all the landes or tenements to which he hath right to enter within al the townes in the same shire, by such entre he hath as good possession & seisin of such landes or tenements whereof he hath title to enter, as if he had entred into euery parcell, and this seemeth great reason, for if a man will enfeffe another without deede of certaine landes or tenements that he hath in many townes within one shire, and hee will deliuer seisin to the feoffee of parcell of the tenementes within one town in the name of al the landes & tenements that he hath in the same town, and in al the other townes &c. all the said tenements &c. shall passe by force of the saide liuery of seisin to him to whom such feoffement in such maner is made.

And yet hee to whome such liuery of seisin is made, hath no right to al the lãds & tenemẽts in all the townes, but by reason of the liuerie of seisin made of parcel of ỹ lands or tenemẽts in one town, a multo fortiori it seemeth good reason ỹ when a man hath title to enter into lãds or tenemẽts in diuers townes within one shire before any entrie by him made, that by the entrie of him made in parcel of the tenements in one town, in the name of al the lands and tenements to the which he hath title to enter within the same shire, this is a seisin of all in him, and by such entrie hee hath possession and seisin in deed, as if he had entred into euery parcel &c.

The second is to vnderstand, that if a man hath title to enter into any lands or tenemẽts, if he dare not enter into the same landes or tenements, nor in any parcel thereof for doubt of beating, or for doubt of maiming, or for doubt of both, if he go & approch as nigh the tenemẽts as he dare for such doubt, and claim by words the tenements to be his, incontinent by such claim he hath a possessiõ and seisin in the tenemẽts, aswel as if he had entred indeed, though he had neuer possessiõ or seisin of the same lãds or tenements before the said claime. And that the law is such, it is wel proued by a plee of an assise in the booke of Assises, An. 38. E. 3. P. 23. the tenor of which ensueth in this forme.

In the County of Dorcet before the Iustices it was found by verdict of Assise, that the plaintife which had right by discent of heritage,

tage, to haue the tenementes put in plaint at the time of the death of his auncestor, which was dwelling in the towne where the tenementes were, and by word claymeth the tenements among his neighbors, but for doubt of death he durst not approch vnto the tenemẽts, bringeth an assise, and vpon the matter found, it was awarded that he should recouer.

The third thing is, to vnderstand within what time, and by what time the claim that is said continual claim shal serue & help him that made the claim and his heire. And as to this it is to wit, ꝑ he that hath title to enter, when he will make his claime, if he dare approch vnto the land then it behoueth him to goe vnto the land, or to parcel of it, and make his claim: and if he dare not approch vnto the land for dread of beating, maiming, or death, then it behoueth him to goe and to approch as nigh as he dare toward the lãd or parcel thereof, and make his claim. And if his aduersary that occuppeth the land die seised in fee, or in fee tail, within a yere & a day after such claim made, by which the tenements discend vnto his sonne, as heire vnto him, yet may he that made the claim, enter vpon the possession of the heirs. But in this case after the yere and the day that such claim was made, if none other claim be made, if the father then die seised the morrow after the yere & the day, or at another day after &c. then may not he that made the claim enter. And therfore if he ꝑ made ꝑ claim will be sure alway that his entre

that not be taken away by such discēt, it behoueth him that within the yere & the day after the first claime, to make another claime, in the forme aforesaid. And within the yeere and the day after the second claim, to make the 3 claim in the same maner, & within the yere and the day after the third claime, to make another claim &c. that is to say, to make another claim within euery yere & day next after euery claim made during the life of his aduersary, & thē at what time that his aduersary dye, his entrie shall not bee taken away by discent. And such claime made in such maner is most commonly taken and called continuall claime of him that made the claime. But yet in case aforesaide, wher his aduersary dieth within the yere and the day next after the first claim, this is in the law a continual claim, inasmuch ỹ his aduersary died within ỹ yere & the day after ỹ same claime, for it is no neede for him that made the claime, to make any other claime, but at what time he will within the same yere & the day &c.

Also if his aduersary be disseised within the yere and day after the claim, and the disseisor dieth thereof seised within the yeere and the day &c. This dying seised shall not hurt him ỹ made the claim, but that he may enter &c. For whosoeuer he be that died seised within the yere & the day after such claim, that shal not hurt him that made the claime, but that hee may enter though there were many dyinges seised, and many discents within the yere and the day &c.

Also

Also, if a man be disseised, and the disseisor die seised within the yere & the day next after the disseisin done, whereby the tenements discend to his heir, in this case the entre of the disseisee is taken away, for ỹ yere & the day that should helpe the disseisee in such case &c. shal not be taken from the time of the title of entre growen vnto him, but onely from ỹ time of the claim by him made in time aforesaid, & for ỹ cause it shal be good for such a disseisee for to make his claim &c. in as short time as he may after the diss. &c.

Also, if such a disseisor occupy the land by xl. yeres without any claime made by the disseisee &c. and the disseisee by little space before the death of the disseisour make claime in the forme aforesaid, if so it fortune that within a yere and a day after such claime the disseisour die seised &c. the entre of the disseisee is congeable, and for this it shal be good for such a man that made no claime that hath title to enter &c. when he heareth that his aduersary lyeth sicke to make his claime &c.

Also, as it is said in the cases put before, where a man hath title to enter because of a disseisin &c. The same law is where a man hath right to enter because of the title &c.

Also in the said Presidents may yee know my childe two thinges. One is where a man hath title to enter vpon any tenant in tayle, if he make any such claim vnto the land &c. then is the state of the taile defeated, for ỹ claime is as an entre made by him, and is of the same

effect in the law, as if he were vpon the same tenements, and had entred in the same tenements, as is aforesaid. And then when the tenant in taile immediatly after such claim continueth his occupation in the tenements, this is a disseisin made of the same tenements vnto him that made the claime, Et sic per consequens, the tenant then hath fée simple &c.

The second thing is, ỹ as oft as he that hath right to enter maketh such claime, & this notwithstanding his aduersary continueth his occupation &c. so oft the aduersary doth wrong & disseisin to him that made the claim. And for this cause so oft may he that made the same claime for euery such wrong & disseisin made vnto him, haue a writ of trespas, Quare clausum suum fregit &c. to recouer his damages &c. Or he may haue a writ vpon the statut of king Rich. the second, made the v. yere of his raigne supposing by his writ, that his aduersary hath entred into the lands or tenements of him that made the claime, where his entrie was not giuen by the law &c. & by such action he shall recouer his damages &c. And if the case be such, that the aduersary occupy the tenemẽts with force & armes, or with a multitude of people at the time of such claime &c. Then may he that made ỹ claim, for euery such time haue a writ of forcible entre & recouer his treble damages.

Also here it is to sée if the seruant of a man that hath title of entre, may by the commaundement of his Master make continual claime for

for his Master in his name, & it seemeth that in some cases he might do this, for if he by his commandemēt come to any parcel of the land and there maketh claime &c. in the name of his Master, this claime is good for his Master, for this that he hath done all that it behoueth his Master to do in such case &c.

Also if a Master say vnto his seruant that he dare not go into the lād, nor into any parcel of the land for to make his claime &c. and dare not approch more nigh vnto ẏ same land, saue to such a place called Dale, & commandeth his seruant to go to the same place of Dale, & there to make a claime for him &c. if the seruant do &c. this seemeth as good claime for his master, as if he had bēn there in his owne person, for that the seruant did all that his Master durst do, and ought to do by the law in such case.

Also, if a man be so sicke, or so lame that he may not in any maner come to the land, nor to any parcell of the same, or if there be a recluse that he may not because of his order go out of his house &c. if such a maner of person commaund his seruant to go and make claime for him &c. and the seruāt dare not go to the land, nor to any parcell thereof for doubt of beating, mayme, or death, and for that cause such seruant commeth as nigh to the land as he dare for such dread, and maketh his claime &c. for his Master, it seemeth that such claime for his Master is good and strong in law, for els his master should be in too great mischiefe, for

It may well be that such a person that is sicke, or lame, or reclusé, cannot find any seruant that dare go vnto the land, nor to any parcell of it to make the claime for him &c. But if the Master of such a seruãt be in good health, and may and dare well go to the tenements, or to parcell of it to make his claime for him &c. if such a Master commaũd his seruant to go to some parcel of the land & make claime for him &c. And when the seruant is in going to do the commãdment of his master, he heareth by the way such thinges that he dare not goe to any parcell of the land for to make any claime for his master, and for that cause he goeth as nigh vnto the land as he dare for doubt of death, and there he maketh claime for his Master in the name of his Master &c. It seemeth that the doubt in the law in such case shalbe if such claime auaile his Master or not, for this that the seruant did not all that his Master at the time of commaundement durst to haue done.

Also some haue said, that where a man is in prison and is disseised, and the disseisor dyeth seised, during the time that the disseisée is in prison, by which tenements discended to the heire of the disseisor, they haue said that this shall not hurt the disseisée that is in prison, but that he may well enter notwithstanding such discent for this that he may not make continual claim when he was in prison. And also if such a one that is in prison be outlawed in an action of Det or Trespas, or in appeal of robbery &c.

he

he shal reuerse such outlawry by writ of Error &c. because he was in prison at the time of the outlawry against him pronounced.

Also if a recouery be had by discent against such a one that is in prison, he shall auoide the iudgement by a writ of Error, for this that he was in prison at the time of such default made &c. and because that such matters of record shal not hurt them that be in prison, but that it shalbe reuersed &c. a multo fortiori. It seemeth that a matter in deede, that is to say, such discent had when he was in prison shal not hurt him &c. specially for this, that he may not go out of prison to make continual claime &c.

And in the same maner it seemeth to them where a man is out of the realme in the kings seruices for businesse of the realm, and if a man be disseised when he is in the seruice of ỹ king. that such discent shal not hurt the disseisee, but for this that he might not make continuall claime &c. it seemeth vnto them, that when he commeth againe into England, he may enter againe vpon the heire of the disseisor &c. For such a man shall reuerse an outlawry that is pronounced against him during the time that he is in seruice &c. Ergo a multo fortiori he shal haue aide by the law in the other case &c.

Also others haue said, that if a man be out of the Realme, though he be not in the kinges seruice, if such a man being out of the Realme be disseised of lands or tenements within the Realme, and the disseisor dye seised &c. the disseisee

seisé being out of the Realme, it seemeth vnto them, that when the disseisee commeth into the Realme, that he may well enter vpon the heire of the disseisor &c. and this seemeth vnto them for two causes. One is, that he that is out of the Realme, may not haue knowledge of the disseisin made vnto him by vnderstanding of the law, no more then that a thing done out of the Realme may be tried within this Realme by the othe of xij. men, and to compell such a man to make continuall claime, which by the vnderstanding of the law can haue no knowledge or cognisance of such disseisin made or done, this shalbe inconuenient, namely when such a disseisin is done vnto him, when he was out of the Realme, And the dying seised was done when he was out of the realm, for in such case he may not by possibility after the cõmon presumption make no continual claime: But otherwise it shalbe if the disseisée were within the realm at the time of the disseisin, or at the time of the dying seised of the disseisor &c. Another matter they alleage for a proofe, that before the statute of king Ed. the 3. made the 34. yere of his raigne, by which statute Nonclaime is out &c. the law was such, that if a fine were leuied of certain lands or tenemẽts, if any that was a stranger to the fine had right to haue & to recouer the same lands or tenements, if he came not & made his claime thereof within a yere and a day next after the fine leuied, he shal be barred for euer, Quia dicebatur finis quod

finem

fine litibus imponebat. And that the law was such, it is proued by the statute of West. the 2. De donis condicionalibus, where it speaketh, if the fine be leuied of tenements giuen in the taile &c. Quod finis ipso iure sit nullus, nec habeant hæredes, aut illi ad quos spectat reuersio (licet plene ætatis fuerint, in Anglia, & extra prisonā) necesse apponere clameū suum. So it is proued, that if a straunger that hath right into the tenements, if he were out of the realm at the time of the fine leuied &c. shall haue no damage though that such fine was matter of record: by greater reason it semeth vnto them that a disseisin & discent that is matter in deed, shal not so greene him that was disseised when he was out of the Realme at the time of that disseisin, & also at the time that the disseisor died seised &c. but that he may well enter notwithstanding such discent. Also inquire if a man be disseised, & he arraine an Assise against the disseisor, & the recognitors of ỹ assise chalenge for the plaintif, & the Justices of assise will be aduised of their iudgmēts vntil ỹ next assise &c. and in the mean season ỹ disseisor dyeth seised &c. yet the said suit of the assise shalbe taken in law for the disseisée a continual claim, insomuch that no default was in him &c.

Also inquire if an Abbot of a monastery die, & during the time of vacation, a man wrongfully entreth in certain parcels of land of the Monasterie, clayming the land vnto him and his heires, and of that estate dieth seised, and

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the land discended vnto his heires, and after that an Abbot is chosen, & made Abbot of the Monastery, a question is if the abbot may enter vpō the heir or not. And it semeth to some that the Abbot may well enter in this case, for this that the Conent in time of vacation was no persō able to make continual claim, for no more then they be personable to sue an action, no more be they personable to make continual claim, for the couent is but a dead body without head, for in time of vacation a grant made vnto them is void, & in this case an abbot may not haue a writ of Entre vpon disseisin against the heir, for this ꝑ he was neuer disseised. And if the abbot may not enter in this case, then he shalbe put vnto his writ of Right, the which shalbe too hard for the house: By which it semeth to thē that the abbot may well enter &c.

Quære de dubijs, legem bene discere si vis,
Quærere dat sapere quæ sunt legitima vere.

¶ Releases.

RElease be in diuers maners, that is to say, release of right that a man hath in lands or tenements, and release of actions reals & personals, & of other thinges. Release of all the right that a man hath in lands or tenements &c. is commonly made in such forme, or to such effect. Nouerint vniuersi per præsentes me A.B. remisisse, relaxasse, & omnino de me & hæredibus meis quietū clamasse E. de D. totum ius, titulum, & clameū meū quæ habui, habeo, vel quouismodo in futuū habere potero,

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de, & in vno meſuag. cũ pertiñ in P. And it is to be vnderſtood, that theſe words, (Remiſiſſe & quiet clamaſ.) be of ſuch effect as theſe words, Relaxaſſe &c. And alſo theſe words which be commonly put in ſuch deedes of releaſes &c. It is to be vnderſtood, Quæ quouiſmodo in futurũ habere potero, be as words voide in the lawe, for no right paſſeth by a releas but the right of the leſſor hath at the time of his releas made: For if it be father and ſonne, and the father be diſſeiſed, & the ſon, liuing his father, releaſeth by his deede to his diſſeiſor al the right that he hath or may haue in the ſame tenemẽts, without clauſe of warrantiſe &c. and after the father dieth, the ſonne may lawfully enter vpon the poſſeſſiõ of the diſſeiſor, for this that he had no right in the land liuing his father, but the right diſcended vnto him by diſcent after the releaſe made by the death of his father. Alſo in a releas of all the right that a man hath in certain landes, it behoueth vnto him to whom the releas is made in ſuch caſe, that he hath a freehold in the landes in deed or in the law, at the time of the releas made, for in euery caſe where he to whome the releas is made hath a freehold in deed or in law at the time of the releaſe made &c. the releaſe is good. Franktenement in lawe is, as if a man haue diſſeiſed another, & therof died ſeiſed, by the which the tenements diſcend vnto his ſon, howbeit that his ſon enter not in the tenementes, yet hee hath a franktenement in the lawe, which by force of

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the discent is cast vpon him, and therefore the releas made is good enough. And if her take a wife so being seised in the law, howbeit that he neuer enter in deed, & dyeth, his wife shal haue therof her dower. And in such case of releas of all his right, howbeit that he to whome the releas is made, ne hath any thing in the franktenement, neither in deede nor in law, yet the releas is good enough: As if the disseisor haue left land that he had by disseisin to another for terme of his life, sauing the reuersion to him, if the disseisée or his heires releas vnto the disseisor all the right &c. that release is good, for that that he to whom the release is made, had in him a reuersion at the time of ỹ releas made.

In the same maner, if a leas be made to a mã for terme of life, the remainder vnto another for terme of life, the remainder vnto the thirde in taile, the remainder vnto the 4. in fee, if a stranger that hath the right vnto the land, releas all his right vnto any of them in the remainder, such releas is good, for this that euery of them hath a remainder vested in himself, yet if the tenant for term of life be disseised, and after he that hath right (the possession being in the disseisor) releas vnto one of them to whom the remainder was made, all his right &c. that releas is voide, for that that he ne had in him no remainder in deed, but all onely a right of a remainder at the time of the releas made.

And note, that euery releas made to him that hath a reuersion or remainder in deede, shall

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ſeme and heires ꝑ haue the franketenement, giuen to them to whom the releas is made, if the tenant haue the release in his hand &c.

In the same maner a releas made to a tenāt for terme of life, or to a tenant in the taile, shall enure vnto them in the reuersion, or to them in the remainder, as well as to the tenaunt of the frankstenement, and shall haue a great aduantage of that, if that they may shew it.

And if there be lord and tenant & the tenent is disseised, and the disseisée releaseth vnto the disseisor all the right that he hath in the seigniorie, or in the land, that releas is good, & the seigniory is extinct. And if the goods of the disseisée be taken, and of them the disseisée sueth a Replegiare against the lord, he shal compel the lord to auow vnto him, and if he will auow vpon the disseisor, then vpon the matter shewed, the auowrie shall be abated, for the disseisée is tenant to them in right and in law.

Also if land bee giuen to a man in the taile, reseruing vnto the donor & his heirs a certain rent, if the donée be disseised, and after the donor releaseth to the donée al the right ꝑ he hath in the land, and after the donée entreth into the land vpon the disseisor: in this case the rent is gone, for this that the disseisée at the time of the release made was tenaunt in right, and in law vnto the donor, & the auowry of fine force ought to be made vpon him by the donor of the rent behind &c. But yet nothing of the right of the lande, that is to say, of the reuersion shall

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paſſe by ſuch releas, for this that the done to whom the releas was made then had nothing in the land but onely a right, & ſo the right of the land may not paſſe by ſuch releas of the doner.

In the ſame manner it is, if a leas be made to one for terme of life, reſerving to the leſſor and to his heires certaine rent, if the leſſee be diſſeiſed, and after the leſſor releaſeth to the leſſee and to his heires, and after the leſſee entreth, howbeit that in the caſe the rent is extinct, yet nothing of the rent paſſeth &c. Cauſa qua ſupra. But if it be very Lord & very tenant, & the tenant maketh a feffement in fee, the which feffee neuer became tenant to the Lord &c. if the Lord releas to the feoffor al his right &c. that releaſe is void, for this that the feoffor hath no right in the lande, and he is no tenant in right to the lord, but onely tenant as for the auowrie to be made, and he ſhall neuer compell the Lord to auowe vpon him, for the lord may auowe vpon the feoffee if he will. Otherwiſe it is where the very tenant is diſſeiſed, as in caſe aforelaid, for if the very tenant that is diſſeiſed holdeth of the lord by knights ſeruice and dieth, his heyre being within age, the Lord ſhall haue and ſeiſe the ward of the heire. And ſo he ſhall not haue the ward of the feoffor that made the feoffement in fee, and ſo it is a great diuerſity betweene the ſe two caſes.

Alſo if a man enfeoffe another in his lande vpon truſt, and to the intent that he ſhall performe his laſt will, and the feoffour occupieth

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[illegible] Ergo the same law giveth [illegible] such feoffees, and their [illegible] confidence &c. For which cause [illegible] that the release made by [illegible] confidence to the feoffour, or [illegible] &c. to extinguish the land &c. shall [illegible] &c. And this is the better opinion as it seemeth, euere since the statute 27. H. 8. cap. 10. Also releases after the matter in law sometime haue their effect by force to inlarge the estate of them, to whom the release is made: As if I let certaine lands to a man for terme of yeeres, by force whereof he is possessed, and I release vnto him all the right that I haue in the lande without more wordes set no ent in the deede, and deliuer vnto him the deede: Then he hath estate but for terme of his life, and the cause is for this, that when the reuersion or the remainder is in a man the which shall enlarge by his release the estate of the tenaunt &c, he shall haue no greater estate but in the manner and fourme as if such a release were settled in lee, and shall by his deede make estate to one in a certaine fourme &c. and deliuer vnto him sealed by force of the same deede, if in such deeds of settlement there be no wordes of inheritance &c. Then hee hath estate but for terme of life &c. and so it is in such release made by him in the reuersion, or in the remainder: For if I let lande to a man for terme of life, and after I release vnto him all my right without more saying in the re-

land his estate is not inlarged. But if I release vnto him and to his heires of his body engendred, then he hath fee taile, and if I release vnto him and to his heires, then hath he fee simple. Also it behoueth in such case to speake in the deede, what estate he is to whom the release is made shall haue &c. And sometime release shall enure to let & put the right of him that maketh the release to him to whom the release is made: As a man is disseised and he releaseth vnto the disseisee all the right that he hath. In this case the disseisee hath his right, so that where his estate before was wrong, now by the release it is lawfull and right: but note wel that when a man is seised in fee simple of any lands or tenements, and another will release vnto him all the right that he hath in the same tenements, it needeth not to speake of the heires of him to whom the release is made, for this that he had fee simple at the time of the release made: for if the release were made to him and to his heires for one day, or for one houre, this shall be as strong vnto him in the Lawe, as if he had released to him and to his heires, for when his right was gone from him at one time by his release without any condition &c. to him that had fee simple, it is gone for euer. But where a man hath a reuersion or a remainder in fee simple at the time of the release made, there if he will release to the Tenaunt for terme of yeares, or for terme of life, as in the taile, it behoueth to determine the estate

that he to whom the releas is made shall haue by force of the same releas. For this that such releas goeth to inlarge the estate &c. of him to whom the releas is made: but otherwise it is where a man hath but a right vnto the land and had nothing in y reuersion nor in the remainder in deede: for if such a man releas all his right to one that is tenant of the franktenement, all his right is gone, though that no mention bee made of the heirs of him to whom the releas is made. For if I let land to a man for terme of life, if I after releas vnto him for to inlarge his estate, either is behoueth that I releas vnto him & to his heirs of his body ingendred, or to him and to his heires males of his body begotten, or by such semblable estate &c. or otherwise he hath no greater estat thē he had before. But if my tenant for terme of life let the same land out to another for terme of the life of his wife, the remainder to another in fee, notwithstanding I releas vnto him vnto whom my tenant letted for terme of life, I shall be barred for euer though that no mention be made of his heirs, for this that at the time of the releas made I had no reuersion but onely a right to haue the reuersion. For by such a leafe with a remainder ouer that my tenant made, in this case my reuersion is discontinued & such a releas shall enure vnto him in the remainder to haue aduantage of this, as well as to the tenaunt for terme of life, for to that intent the tenant for terme of life and he in the remainder be as one

tenant

dyssesse in the lawe, & he ag[ai]n[st] whome the tenant sueth fayleth in his demeane as of fee, at ye time of such release made vnto him. Also if a man be disseised by two, if he release vnto one of thē he shall hold his fellow out of ye land, & by such release shal sole haue possessiō & estate in the land. But if one disseisor enfeoffe two in fee, & the disseisee release to one of them, this shall enure to both the said feoffees. And the cause of the diuersitie betweene these two cases, is apparant enough.

Also if I be disseised, & the disseisor is disseised, if I release to the disseisor of my disseisor, my disseisor shall neuer haue Assise nor entre vpon his disseisee, for this that his disseisor hath my right by my release &c. And so it seemeth in this case, if there were xx. disseisors eyth after other, & I release to the last disseisor, he shall haue all the right of their actions, and their title. And the cause is as it seemeth, for this, ye in many cases yͤ a mā hath a lawful title to enter, though he entre not, he shal haue all meane titles by his release &c. But this is not in euery case as shalbe said afterward.

Also if a man be disseised the which hath issue within age, and dyeth, being the issue within age, the disseisor dieth seised, & the land discendeth to the heire, and a stranger abateth, and after the issue of the disseisee whom he ought vnto his age releaseth all his right &c. to the abatour, In this case the heire of the disseisee shal haue no Assise of Mordaunceſter against the abator, but he shalbe barred of the

Wife, for this this the abator hath the right of the fourme of the diſſeiſee by his releas, & the entre of the fourme was lawful &c. for this that he was in age at the time of the diſcent &c. But if a mã be diſſeiſed, & the diſſeiſor maketh a feoffement vpon condition, that is to ſay, to yeild vnto him certein rẽt, & for defaut of payment a rẽntre &c. if the diſſeiſee releaſe to the feffee vpon condition, yet this amẽdeth not the eſtate of the feffee vpon condition, for notwithſtanding ſuch releas, yet his eſtate is vpõ condition as it was before. In the ſame maner it is where a man is diſſeiſed of certein land, and the diſſeiſor graunteth a rent charge out of the ſame land, though that after the diſſeiſee releaſeth vnto the diſſeiſor &c. yet the rent charge abideth in his force. And the cauſe is in theſe two caſes, that a man ſhal haue nõe auantages by ſuch releaſe that ſhall be againſt his owne grower accep[illegible] againſt his own graunt. And though ſome haue ſaid that where the entre of a man is tolleable vpon a tenant, if he releaſe to the ſame tenant, that this releaſeth vpon the tenant ſo as he had entred vpon the tenant, and after enfeoffed him &c. this is not true in euery caſe, for in y firſt caſe of theſe two caſes, if the diſſeiſee in fee enter vpon the feoffee vpon condition, and after enfeoffeth him then the condition is all put aſide & void. And in the ſecond caſe if the diſſeiſee enter & enfeoffe him that graunted the rent charge, then is the rent charge anoyded. But it is not anoyded

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by any such releasé hath an entire made &c.

Also, if a man be disseised by a child within age, the which alieneth in fee, and the alienée dieth seised, and his heire entereth (being the disseisor within age) Now it is in the election of the disseisee to have a writ of Dum fuit infra ætatem, or a writ of right against the heire of the alienée, a which writ soever he taketh of them, he ought to recouer by the law. And also he may enter into the land without any recouery, and in this case the entre of the disseisee is taken away: but in this case if the disseisee releasé his right to the heire of the alienée, and after the disseisee bringeth a writ of Right against the heire of the alienée, and he toyneth the mise vpon the elere right &c. the grand assise ought by the law to find that the tenant hath more elere right &c. then hath the disseisee, for this that the tenant hath the right of the disseisée, and his releasé, which is more auncient and more elere right then the right of the disseisor, for by such releasé, all the right of the disseisée passeth vnto the tenant, and is in the tenant. And to this some haue said, that in such case where a man hath ri[illegible] to lands or tenements (but his entrie is not lawfull) if he releasé vnto the tenant &c. then such releasé shall enure by way of extinguishment. And vnto this it may be said, that this is trueth vnto him that releaseth, for by his releasé he hath dismissed himselfe clean of his right as to his person: But yet the right that he had may well passe & go vnto the land by his releasé,

Pollyfe, for it shoulde be inconvenient that such
a generall right should be extinct all utterly
&c. for it is commonly said, that right may not
die. But a release doth worke by the way of ex-
tinguishment against all persons, as where he
to whom the release is made, may not have that
that unto him is released. As if there be Lord
and tenant, & the lord releaseth unto the tenant
all the right that he hath in the landlordship, or all
the right that he hath in the land &c. such a re-
lease worketh by way of extinguishment against
all persons, insomuch that the tenant may not
have the same by descent. In the same manner
is a release made to the tenant of the land of a
rent charge, or of a common of pasture, for it is
that the tenant may not have that, that unto
him is released &c. And such releases go away
by extinguishment against all persons.

Also, to prove that the graund Assise ought
to passe for the demaundant in the case afore-
said, I have herd often in the Lecture upon
the statute of westm. the second that beginneth,
In casu quando vir amiserit per defaltam tene-
mentum quod fuit uxoris suæ &c. that at the
common law before that statute, if a lease were
made to a tenant for terme of life, the remain-
der over in fee, and a stranger by a fained acti-
on recover against the tenant for terme of life
by default, and after the tenant dieth, he in the
reversion hath no remedy before the statute,
saue this, that he had no possession of the land,
but if he in the reversion had entred upon the
tenant for terme of life, and disseised him, and

after

after the tenant entreth upon him, & after the tenant for terme of life letteth by such recouery had by default, and dyeth: now he in the remainder may well haue a writ of right against him that recouered, for this that the mise shall be ioyned onely vpon the cleere right. And yet in this case the seisin of him in the remainder was defeated by the entre of the tenant for terme of life. But peraduenture some will argue & say, that he shall haue no writ of right in this case, for this that when the mise is ioyned in such manner, that is to say, if the tenant haue more cleere right to the land in the manner as it is holden, then the demandant hath in the manner as he demandeth. And for this that the seisin of the demandant was defeated by the entre of the tenant for terme of life, then he hath no right in the manner as he demandeth. Vnto this it may be said, that those words (Modo & forma prout &c.) in many cases be words of the maner of pleading, and no words of substance: For if a man bring a writ of Entre (In casu prouiso) of alienation made by the tenant in dower to his disenheritance, and pleadeth of the alienation made in fee, and the tenant saith that he alyened not in the manner as the demandant hath declared, and vpon this they be at issue, and it is found by verdict that the tenant alyened in the mise, or for terme of an others life, the demandant shall recouer, and yet the alienation was not in the manner as the demandant hath declared.

Also, if there be Lord and tenant, and the

tenant

tenant holdeth of the Lord by fealty onely, and the Lord distraineth the tenant for rent, & the tenant bringeth a writ of trespas against his Lord for his cattel so taken, and the Lord pleadeth that the tenant holdeth of him by fealty & certain rent, and for the rent behind he came to distraine &c. and demaundeth iudgement of the writ brought against him, Quare vi & armis &c. And the other saith that he holdeth not of him in the maner as he suppoſeth, and upon this they be now at iſſue, & it is found by verdict that he holdeth of him by fealty tantum, In this case the writ shall abate, and yet he held not of the Lord in the maner as the Lord had said, for the matter of the iſſue is, whether the tenant holdeth of him or not: For if he hold of him, though the Lord distraine for other services that he ought not to have, yet such a writ of trespas Quare vi & armis &c. lyeth not against the Lord but shal abate.

Also, in a writ of Trespas of beating, or of goods taken, if the defendant plead not culpable in the maner as the plaintife suppoſeth, & it is found that the defendant is culpable in an other towne, or at an other day, then the plaintife suppoſeth, yet he shall recouer. And in many mo other cases these words, that is to say, in the maner as the demaundant or the plaintife hath suppoſed, be no matter of substance of the iſſue: for in a writ of right where the mis is taken upon the cleire right, it is as much to say and to such effect, that is to wit, whether hath the more right, the tenant or

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81

...commandment to the thing so demanded &c.
...Also, if a man be disseised, and the disseisor
...hath issue &c. and his sonne entreth by dis-
...cent, and the disseisee entereth upon the heire of
...the disseisor, the which entrie is a disseisin &c.
...& the heire bring an Assise or a writ of right
...against the disseisee, he shalbe barred: For this
...is that when the grand assise is sworne, there
...she is upon the clere right, and not upon the
...possession &c. for if the heire of the disseisor had
...brought an Assise of Nouel disseisin, or a writ
...of Entre in nature of assise, & recouered against
...the disseisee, & sued execution, yet may the dis-
...seisee haue a writ of Entre in the Per against
...him of the disseisin made vnto him by his fa-
...ther, or he may haue against the heire a writ of
...right: But if the heire ought to recouer a-
...gainst the disseisee in y case aforesaid by a writ
...of right, then all his right shalbe clerely gone,
...by this that a finall iudgement should be giuen
...against him, which should be against reason
...where the disseisee hath more clere right &c.
...And know ye my son, that in a writ of Right
...after this that the fower Knights be chosen to
...the grand Assise, then there is no greater de-
...lay then in a writ of Formedon, after this that
...the parties be at issue, &c. And if the mise be
...ioyned vpon battaile, then there is lesse delay.
...Also, a release of all the right &c. in some
...case is good made vnto him that is supposed
...tenant in the law, though he haue nothing in
...the tenements, as in a Precipe quod reddat.

if the tenant after the land hanging the suit, and after the demandant releaſeth to him all his right, that releaſe is good, for this that he is ſuppoſed to be tenant by the fruit of the demandant, & yet he hath nothing in the land at the time of the releaſe made. In the ſame manner it ſtil in a Præcipe quod reddat the tenãt vouch, & the voucher enter into the garranty, if after the demandant releaſe to the voucher all his right &c. this is good enough, for this that the voucher after this that he hath entred into the garranty, is tenant in law to the demandant.

Alſo, as to releaſes of actions reals, and actions perſoneis, it is ſo that ſome actions be mixt in the realtie and in the perſonaltie, as if an action of Waſt be ſued againſt the tenant for terme of life, this action is in the realtie, for this that the place waſted ſhall be recouered. And alſo it is in the perſonaltie, for this that the treble damnage ſhalbe recouered for the treſpaſſe & waſt done by the tenãt, & for this in this action a releaſe of actions reals is a good plee in barre, & ſo is a releaſe of actions perſoneis. In the ſame manner it is in Aſſiſe of Nouel diſſeiſin, for this that it is mixt in the realtie and in the perſonalty. But if ſuch Aſſiſe be arreigned againſt the diſſeiſor, the tenant of the diſſeiſin may plead a releaſe of all actions perſoneis for to barre the Aſſiſe, but not a releaſe of actions reals, for none ſhal plead a releaſe of actions reals in aſſiſe, but the tenants &c.

Alſo, in ſuch actions that ought to be

ſued

against the tenant of the franktenement, the tenant haue a release of all actions reals of the demaundant made vnto him before the writ purchased, & he pleadeth it, this is a good plea for the demaundant to say that he that pleadeth that plea had nothing in the franktenement at the time of the release made for that he had no cause to haue action real against him.

Also, in such case where a man may enter into lands or tenements, he may haue of this an action real which is giuen vnto him by the law against the tenant. As in this case the demaundant releaseth to the tenant a maner actions reals, yet this taketh not away the entre of the demaundant, but the demaundant may well enter, notwithstanding such release, for that is nothing is released but the action &c. In the same maner it is of things personels, As if a man wrongfully take my goods, if I release vnto him all actions personels, yet I may by the law take my goods out of his possession.

Also if I haue cause to haue a writte of Detinue of my goods against another though that I release vnto him all actions personels, yet I may take my goods out of his possession, for this that no right of goods is released to him but onely the action &c. Also, if a man be disseised, and the disseisour maketh a feoffement vnto diuers persons to his vse, and the disseisour continually taketh the profites &c. and the disseisee releaseth vnto him all actions reals

dealt, and after he sueth against him a writ of entre in nature of assise, because of the Statute, for this that he taketh the profits. Enquire howe the disseisour shalbe holpen by the said releas, for if he will plead the releas generally, then the demaundant may say that he had nothing in the franktenement at the time of the releas made, and if he pleade the releas specially, then it behoueth him to knowledg a disseisin, and then may the demandant enter in the land &c. by his continance of the disseisin &c. But peradventure by special pleading he may be barred of the action that he sueth &c. though that the demandant may enter &c.

Also if a man sue appeale of felony of the death of his auncestor against another, though the appellant releas vnto the defendant al maner actions reals and personals, this shall not help the defendant, for this that this appeil is not an action reall, insomuch that the appellant shall not recouer any realty, nor such appeil is no action personall, insomuch that the suyng was vnto his auncestor and not vnto him, but if he releas to the defendant all maner of actions, then it shall be a good barre in appeil, and so a man may see that a releas of all maner of actions, is better then a releas of actions reals and personals &c.

Also in appeale of robbery if the defendant will plead a releas of the appellant of all actions personals, this serueth no plee, for an action of appeale where the appellant shall haue

iudge-

iudgement of death &c. is more high then an action personall, and it is not properly sayd an action personall, and therefore if the defendant shall haue the release of the appellant to barre him of the appeale, it behoueth him to haue a release of all maner of appeales, or a release of all maner of actions, as it semeth &c. But in appeale of mayhem a releas of all maner of actions personals is a good plee in barre, for this that in such an action he shal recouer but damages.

Also, if a man be outlawed in an action personal by proces of the originall, & bring a writ of error, if he at whose suit hee was outlawed will plead against him a releas of actions personals, this semeth no plee, for by the said action he shal recouer nothing in the personalty, but all onely to reuerse the vtlawry: but a release of a writ of error shalbe a good plee &c.

Also, if a man recouer det or dammage, and he releas to the defendant al maner of actions, yet hee may lawfully sue execution by Capias ad satisfaciend, or by Elegit, or by Fieri facias, for execution by such writs may not be sayde an action, but if after a yere and a day the plaintife will sue a Scire facias to haue execution &c. then it semeth a releas of all actions shall be a good plee in Barre, but some haue thought the contrary, insomuch that the writ of Scire facias is a writ of execution, and is to haue execution. But insomuch that vpon the same writ the defendant may plead diuers mat-

ters

ores after the iudgment giuen to put him from
execution, &c. Item, by a diuers other &c. ther-
fore it may well be sued action &c. and I trowe
if in a fair face one of a fine, a releas of al maner
of actions is a good plee in bar, but where a man
hath recouered out by damage and it is accep-
ted be fiuen them that the plaintif shall be put
out from auie, the is behouely that that plain-
tife maie a releale to him of al maner actions.

Also if a man releale to another al maner de-
mands, this is the most best releas that bee is
When the releas is made can haue, and most
that enure to his aduantage, for by such releas
of all maner of demands, all maner of actions
reals & personals, and actions of appeales, be
gone and extinct, and all maner of executions
be gone and extinct: & if a man hath title to en-
ter in any lands or tenementes, by such releas
his title is gone. And if a man haue rent ser-
uice, or rent charge, or common of pasture &c.
by such releas of all maner demands to the te-
nant of the land, whereof the seruice or the re-
entre is going out, or in what land soeuer the
common be, the seruice and rent, and the com-
mon is gone and extinct &c.

Also, if a man releas to another all manner
quarels, or all controuerlies or debates be-
tweene them: & inquire to what matter, and to
what effect such wordes do extend.

Also if a man be bound by his bede to ano-
ther in a certain sum of money to pay at a feast
of ℣. Mich. then next following &c. if the ob-

lige

Iudge before the said feast, releas to the obligor all actions, he shall be barred of the duetie for euer, & yet he might haue no action at the time of the releas made. But if a man let land to another for terme of yeres, to yeeld at the feast of S. Mich. next insuing xl.s. and before ỹ same feast he releaseth to the lessee all actions, yet after the same feast he shall haue an action of debt for the nonpaiment of the xl.s. notwithstanding the saide releas. Study the cause of the diuersitie betwéen these two cases.

Also, where a man will sue a writ of right, it behoueth that he pled of the seisin of himselfe or of his ancestors, & also that the seisin was in time of the same king, as he pleadeth in his plée, for this is an ancient lawe vsed, as it appeareth by report of a certain plée, in such forme as insueth. Sir J. Warrey brought a writte of right against Rainold Ashlington, & demaunded certain tenements &c. the mise was ioined in the bank, & the original and the proces were sent before Iustices érrãts wher the parties came, & the xij. knights were sworne without challenge of the parties to be allowed, for this ỹ the election was made by assent of the parties, with the 4. knights, and ỹ oth was such, That I shall say truth &c. whether R. of N. haue more right to hold the tenements that J. Warrey demanded against him by his writ of right, or John to haue the tenemẽts as he demandeth, and for nothing to let to say ỹ truth, as God me helpe &c. without saying to their

knowledge, & such oth shalbe made in attaint, and in battail, and in waging of law, for those do euery thing vnto an end: but I. B. pleaded of the disseisin of one Rafe his ancester in the time of king H, & Rainold vpō the mise ioined, tendred half a marke for the time &c. and vpon this Herle Iustice said to the grand assise, after that they were charged vpon the clére right: Goodmen, Rainold gaue half a mark to the K. for that time, to the intent þ if ye find that the ancester of I. was not seised in time þ the demandant hath pleded, you shal inquire no further vpon the right, and for this ye shall say to vs whether the ancester of I. Rafe by name, was seised in the time of K. Henry as he hath pleded or not, & if ye find that he was not seised in the time, ye shal inquire more, and if ye finde þ he was seised, thē inquire farther of þ right: and after the grand assise came to their verdict and said þ Rafe was not seised in the time of King H. whereby it was awarded þ Rainold should hold the tenements against him demāded to him and to his heirs quite of I. Barrey and his heirs, to the remnant, and John in the mercy.

## Confirmation.

A Déed of confirmation is most commōly in such form, or to such effect. Nouerint vniuersi &c. me A. de B. ratificasse approbasse & confirmasse C. de D. statum & possessionē quos habeo, de, & in vno messuag. cum pertin in N. And in some case a déed of cōfirmation is good & bat-

able

uble, where, in the same case a dede of releas is not good nor vailable. As I set land to a man for terme of his life, the which letteth the same lād to another for xl. yeres, by force of ꝑ which he is possessed, if I by my dede confirme ꝑ state of the tenant for term of yeres, and the tenant for term of life dieth during the term of yeres, I may not enter in the land during the same terme, yet if I by my dede of releas haue released to the tenant for terme of yeres in the life of the tenant for terme of life, the releas shall bee void for this, that thē no priuity was betweēn me and the tenant for terme of yeres, for a releas is not auaileable to the tenant for term of yeres, but where a priuity is betweēn him and him that releaseth. In the same maner it is if I be disseised, & the disseisor maketh a releas to another for term of yeres, if I releas vnto the termor that is void: but if I confirm the estate of the termor that is good and effectual. Also, if I be disseised, & I confirm the state of the disseisor, thē he hath a good & rightful estate in fee simple, though that in the dede of confirmation no mention is made of his heires, for this that he had fee simple at the time of the confirmatiō for in such case if the disseisee confirm the state of the disseisor, to haue & to hold to him for terme of his life, yet the disseisor hath fee simple, & is seised in his demeln as of fee, for this ꝑ whē his estat was confirmed, he had fee simple, & in such dede he may non change his state wout entre vpon him &c. in the same maner it is, if the

eſtat be cõfirmed for term of a day, or for term of an howꝛ, he hath a good eſtate in fée ſimple, for this, ꝑ his eſtate in fée ſimple was once cõfirmed, for cõfirware, idẽ eſt quod firmum facere.

Alſo, if .j. be diſſeiſors, & the diſſeiſée releaſeth to the one, he ſhal hold his fellow out of ꝯ land: but if the diſſeiſée confirme the eſtate of one without more ſpéch in the déed, ſome ſay ꝑ he ſhall not hold his fellow out, but he ſhal hold iointly with him, for this, that nothing was cõfirmed but this eſtate that was ioint, & for this ſome haue ſaid, ꝑ if .2. iointenãts be, & the one confirmeth the eſtate of the other, that he hath but a ioint eſtate as he had before. But if he haue ſuch wordes in the déede of confirmation, to haue & to hold to him and to his heirs al the tenemẽts wherof mẽtion is made in the confirmattõ then he hath eſtate ſole in the tenemẽts, and therefore it is a good and a ſure thing in eueris confirmation to haue theſe wordes, to haue and to hold the tenements &c. in fée, or in fée taile, or for term of life, as for term of yeres, after or as the caule or matter is: for to thintent of ſome, if a man let land to another for term of life, & after he confirmeth his eſtate by theſe wordes, to haue & to hold his eſtate to him and to his heirs, this confirmation as concerning his heires is voide, for his heires cannot haue his eſtate which was but for term of life, but if he confirme his eſtate by theſe words, to haue ꝯ ſame lãd to him & to his heirs, this cõfirmation maketh fée ſimple in this caſe to him

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in the land, for this, that these words to haue & to hold &c. goeth to the land & not to the estate that he hath &c. Also if I let certein land to a woman sole for terme of her life, the which taketh a husband, & after I confirm the estate to the husband & to the wife for term of their two liues, in this case ỹ husbād holdeth not iointly with the wife, but holdeth in the right of hys wife for term of his life: but this confirmation shal enure to the husband by way of remainder for term of his life, if he surmiue his wife. But if I let land to a woman sole for term of yeres, which taketh a husband, & after I confirm the estate to the husband and the wife, for term of both their liues, in this case they haue ioint estate in the franktenement of the land, for this that the wife had no franktenement before.

Also, if a Parson of a church charg the glebe of his Church by his deed, and the Patron & the Ordinary confirm ỹ same grant, & all that is comprised ẅin the same grant, ỹ same grant shalbe in his strength after the purpose of the same grant, but in such case it behoueth ỹ the patron haue fee simple in the aduowson, for if he haue estate in the aduowson for term of life, or in tail, then the grant shal stand but during his life, & the life of ỹ parson that granted it &c.

Also if a man let land for term of life, which tenant for terme of life chargeth the land with a rent in fee, & he in the reuersion confirmeth the same grant, this charge is good ynough & effectual. Also if there be a perpetual Chantry

whereof the ordinary hath nothing to meddle nor to do, the patron of the chantry, & the chaplain of the same chãtry may charge the chãtry wt a rẽt charge in perpetuity. Also in some case these verbs Dedi & concessi, haue the same effect in substãce, & shal enure to the same intent as this verb cõfirmaui: as if I be disseised of a plough lãd, & after I make such a deed &c. Sciant presentes &c. quod dedi to the disseisor ỹ said plough land &c. And if I deliuer al onely the deed to him wtout liuery of seisin of ỹ land, that is a good confirmation & as strong in ỹ law, as if he had in the deed this verb Confirmaui &c.

Also, if I let land to a man for terme of yeres by force of which he is possessed, and after I make him a deed &c. Quod dedi vel cõcessi &c. the same land to haue for terme of his life, & deliuer him the deed, then by & by he hath estate in the land for term of his life, & if I say in the deed, to haue to him & to his heires of his body engendred, he hath estate in the tail, & if I say in ỹ deed, to haue and to hold to him and to his heires, he hath estate in fee simple, for this shal enure to him by force of cõfirmation to enlarge his estate. Also if a man be disseised, & the disseisor dyeth seised, and his heirs in by discent, after the disseisee, and the heire of the disseisor make iointly a deed to an other in fee, & liuery of seisin vpon this is made, as to the heir of the disseisor that ensealeth the deed, the tenements passe by the same deed by way of fesfement, and as to the disseisee that ensealeth the same deed,

this

this shal not enure by the way of confirmation: But if the disseisee in this case bring a writ of Entre in the (Per and Cui) against the alienee of the heire of the disseisor, enquire how he shal plead the deed against the defendant by way of confirmation &c. And know this my child, that it is one of the most honorable, laudable, and profitable things in our Law, to haue the science of well pleading, in actions reals and personals, and for this I counsaile thee, especially to set thy courage & care to learne that.

Also if there be Lord, and tenant, & the lord confirmeth the estate that the tenant hath in the tenemẽts, yet the seignior wholy abideth to the lord as it was before. In the same manner it is if a man haue a rent charge out of certain land, and he confirmeth the state that the tenant hath in the land, yet abideth to the confirmor the rent charge. In the same maner it is if a man haue common of pasture in ỹ land of any other, if he confirme the state of the tenant of the land, nothing shal depart from him of his common, but this notwithstanding the common abideth to him as it was before.

But if there be lord and tenant, which holdeth of his lord by seruice of fealty and xx.s. of rent, if the lord by his deed confirme the estate of the tenant to hold by xij.d. j.d. or by an ob. in this case the tenant is discharged of all other seruices, and shall yeld nothing to the Lord but that that is comprised within the same confirmation, yet if the Lord will by the deede of confirmation, that the tenant in this

cause ought to yeeld to him an Hawk or a Rose yerely at such a feast &c. this reservation is void, for this that he reserueth to him a new thing that neuer was parcell of the seruices before the confirmation, and so the Lord may abridge the seruices by such confirmation, but he may not reserue to him a new seruice &c.

Also if there be lord, meine, and tenant, & the tenant is an Abbot that holdeth of the meine by certain seruices yerely, the which hath no cause to haue acquitance against his meine for to bring a writ of meine &c. in this case if the meine confirme the estate that the Abbot hath in the land, to haue & to hold the land vnto him & his successors in frankalmoigne or free almes &c. in this case this confirmation is good, & then the Abbot holdeth of the meine in frankalmoigne: and the cause is for this, that no new seruice is reserued, for all the seruices specially specified be extinct, & nothing is reserued to the meine, but the abbot shal hold the land of him as it was before the confirmation, for he that holdeth in frankalmoigne ought to do no bodely seruice, so that by such confirmation it appeareth that the meine shall not reserue vnto him no new seruice, but that the landes shall be holden of him as it was before, and in this case the Abbot shal haue a writ of Meine if he be distrained in his default by force of the said confirmation, where percase he might not haue such a writ before &c.

Also if I be seised of a villein, as of a villein in grosse, & an other taketh him out of my pos-

session

ſeſſion claymyng him to be his villein, whereas he hath right to haue him as his villein, & after I confirme the eſtate to him that he hath in my villein, this confirmation ſeemeth void, for this, that none may haue poſſeſſiō of a man as of a villein in groſſe, but he which hath right to haue him as his villein in groſſe, and inſomuch that he to whom the confirmation was made, was not ſeiſed of him as of his villein at the time of his confirmation, ſuch confirmation is void: but in this caſe if ſuch words were in the deede, Sciatis me dediſſe & confirmaſſe tali &c. talem villanum meū, this is good, but this ſhall enure by force and way of grant, and not by way of confirmation &c.

Alſo ſometimes theſe verbs (Dedi & conceſsi) enure by way of extinguiſhment of the thing giuen or granted, As a tenant holdeth of his lord by certein rent, & the lord by hys deed granteth to the tenant & to his heires the rent &c. this ſhall enure to the tenant by way of extinguiſhment, for by this grant the rent is extinct. In the ſame maner it is where one hath a rent charge of certein land, & he granteth to the tenant of the land the rent charge, and the cauſe is for this, that it appeareth by the words of the grant that the will of the donour is, that the tenant ſhal haue the rent &c. in ſo much that he may haue no rent out of his owne land, for this deed ſhal be vnderſtood & taken for the moſt aduantage & auaile of the tenant that it may be taken, and for that, it is by way of extinguiſhment.

Alſo

Also, if I let land to a man for term of yeres, and after I confirme his estate without mo wordes put in ỹ deed, he hath no greater estate but for term of yeres, as he had before: But if I release to him my right that I haue in the land without mo wordes put in ỹ deed, he hath estate of frankstenement. And so maist thou my child understand great diuersities betwéen releases & confirmations. And if I be within age, & let land to one for terme of xx. yeres, and he graunteth the land for terme of x. yeres, so that he graunteth but parcell of the terme: In this case when I am of full age, if I release vnto the graunter of the lesse &c. this release is void, for this, that there is no priuitie betwéen him & me. But if I confirme his estate, then this confirmation is good: But if my lesse grant all his estate to an other, then my release made to the grantée is good & effectuall.

Also, if a man grant a rent charge out of his land to an other for terme of his life, and after I confirme his estate in the same rent, to haue and to hold to him in fée taile, or in fée simple, this confirmation is void, as to the enlarging of his estate, for this, that he that confirmeth had no reuersion in the rent: But if a man seised in fée of rent service, or of rent charge, & he granteth the rent to an other for terme of life, and the tenant attorneth, & after he confirmeth the estate of the grantee in fée taile, or in fée simple, this confirmation is good as to enlarge his estate after the wordes of the deede of confirmation, for this that he that confirmed the

estate

estate at the time of the confirmation had the reuersion of the rent &c. But in this case aforesaid, where a man graunteth a rent charge to an other for terme of life, if he will that the graunte shall haue estate in the taile, or in fee, him behoueth that the deed of the graunte of the rent charge for terme of life, be surrendred or cancelled, and then to make it a new deed of such a rent charge, to haue and to take to the graunte in the taile, or in fee. Ex paucis dictis intendere plurima potsis.

¶ Attournement.

Attournement is if there be Lord & tenant, and the Lord will grant by his deed the seruice of his tenant to an other for terme of yeres, or for terme of life, or in taile, or in fee, him behoueth that the tenant attourne to the graunte in the life of the graunter by force & vertue of the graunt, or otherwise the grant is void, and attournemēt is none other thing in effect, but when the tenant hath hard of the graunt made by his Lord, that the same tenant by word agree to the said graunt, as to say to the graunte; I agree me to the graunt made to you, or I am well content of the grant made to you &c. But the more common attournement is to say, sir, I attourne to you by force of the same graunt, or I become your tenant &c. or to deliuer vnto the graunte i.d. ob. or farthing, by way of attournement &c.

Also, if a man be seised of a manour, which manor is parcel in demesne, & parcel in seruice

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If he will alien such a manor to an other, it behoueth that by force of the alienation al the tenants that hold of ꝯ alienor (as of this manor &c.) attourne to the alienee, or otherwise ꝯ services abide continually in the alienor, except tenants at will, for it needeth not ꝯ tenants at will atturne vpon such alienation &c. for this ꝯ the same lands or tenemẽts ꝯ they hold at will do passe to ꝯ alienee by force of such alienation.

Also if there be Lord and tenant, and the tenant letteth the tenements to a man for terme of life, the remainder to an other in fee, if the lord grant the seruices to the tenant for terme of life in fee, in this case the tenant for terme of life hath fee in the seruices, but the seruices be put in suspence during his life, but his heires shall haue the seruices after his death, and in that case it needeth not attournement, for by the acceptance of the deed of him that ought to attorne, this is attornement in him selfe &c. but where the tenant hath as great and high estate in the tenements as the Lord hath in the seignory, in such case if the Lord graunt the seruice vnto the tenant in fee, this enureth by way of extinguishment, Causa patet.

Also, if there be Lord ⁊ tenant, ⁊ the tenant maketh a lease to one for terme of life, sauing ꝯ reuersion vnto him, if the lord grant the seignory to the tenãt for terme of life in fee, in this case it behoueth that he in ꝯ reuersion attorne to the tenãt for term of life by force of ꝯ grant, or otherwise the grant is void, for this ꝯ he in

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the reuersion is tenant to the Lord.

Also, if there be Lord and tenaunt, and the Tenant holdeth of the Lord by twenty manner of seruices, and the Lorde graunteth his seigniory to another, if the tenaunt pay or do any of the seruices to the grauntée, this is a good attournement, of and for the seruices, though that the tenauntes entent was to attourne but of the same parcel, for this that the seigniory is an whole thing, though that there be diuers manner of seruices that the tenaunt ought to do.

Also, if there bee Lord and tenaunt, and the tenant holdeth of the Lorde by many maner of seruices, and the Lord graunteth the seruices to another by fine, if the grauntée sue a Scire facias out of the same fine, for any parcel of the seruices, and had iudgement to recouer, this iudgement is a good attournement in the law for all the seruices.

Also, if the Lord of the rent graunteth the seruices vnto another, and the tenant attourneth by a peny, and after the grauntée distraineth for rent behinde, and the tenaunt to him maketh rescous: In this case the grauntée shall haue no assise of the rent, but hee shall haue a writ of Rescous, for that the gift of the penie was but by way of attournement. But if the tenant had giuen vnto the grauntée the said penie as parcel of the rent, or an halfe penie, or a farthing, by way of seisin of the rent, then this is a good attournement, and also it is

is a good seisin to the grauntée of the rent, and then vpon such rescous the grantée shall haue an Assise &c.

Also, if a man let tenementes for terme of yeres, by force of which the lessée is seised, and after the Lord grauteth by his déede the reuersion to another for terme of life, or in taile, or in fée, it behoueth him in this case that the tenant for terme of yeares attourne, or otherwise nothing passeth to such grauntée by such deed. And if in this case the tenant for terme of yeares attourne to the grantée, then by and by passeth the franktenement to the grauntée by such attournement, without any liuery of seisin &c. for this, if any liuerie shalbe made, or néedeth to be made in such case, thē the tenant for terme of yeres shalbe at the time of the liuerie of seisin out of his possession, which should be against reason.

Also, if lande bée let to a man for terme of yeares, the remainder to another for terme of life, reseruing to the lessor a certain rent by the yeare, and liuery of seisin is made vpon this to the tenant for term of yeres, if he in the reuersion in such case graut his reuersiō to another &c. and the tenant that is in the remainder after the term of yeres attourneth, this is a good attournement, and he to whom the reuersion is graunted, by force of such attournement shall distraine the tenant for terme of yeares for the rent due after such attournement, though the tenant for term of yeres neuer attourned vnto him,

him, and the cause is for that, where the reuersion is dependent vpon the state of franktenement, it sufficeth that the tenant of the franktenement attourne vpon such grant of reuersion &c. And it is to wit, that where a lease for terme of yeares, or for terme of life, or a gift in the taile is made to any man, reserving to such a lessor or donor certaine rent, if such a lessor or donor grant his reuersion to another, and the tenant of the land attourne, the rent passeth to the grantee, though in the deede of the graunt of reuersion, no mention is made of the rent, for this that the rent is incident to the reuersion in such case, and not accessorie, for if a man will grant the rent in such case vnto another, reserving to him ỹ reuersion of the land though the tenant attourne to the graunte, this shall be but a rent seeke &c.

Also, if a man let land to another for term of life, and after such lease he confirmeth by a deed the estate of the tenant for terme of life, the remainder to another in fee, and the tenant for terme of life accepteth the deed, then is the remainder indeed to him to whom the remainder was giuen or limitted in the same deed, for by the acceptance of the tenant for terme of life of the same deed, this is a grant of him, and so an attournment in law. But yet he in the remainder shal haue none action of waste, nor other benefit by such remainder, but if he haue ỹ same deed in his hand by which the remainder was granted vnto him, & for this that in such case

the

the tenant for terme of life will retaine to him the deede, to the intent that hee in the remainder shal not haue an acti̅ of waste against him, for this that he may not come to haue the possession of the deede &c. It shall be good in such case for him in the remainder, that a deede indented be made by him that will make the confirmation, and the remainder ouer &c. And he that maketh such confirmation deliuer a part of the Indenture to the Tenaunt for terme of life, and the other part to him that hath the remainder, and then he by shewing of the part of the indenture, may haue an action of waste against the tenant for term of life, and also other auantage, that he in the remainder may haue in such cas.

Also, if two Iointenauntes bee, which let lande to another for terme of life, yelding to them and their heirs a certaine rent by yeere: In this case if one of the two iointenantes in the reuersion releas to the other iointenantes in the same reuersion, this release is good, and he to whom the releas is made, shall haue onely the rent of the tenaunt for terme of life, and shal haue a writ of waste against them, though he neuer attorned by force of such releas. And the cause is, for the priuitie that once was betweene the tenant for terme of life, and them in the reuersion.

In the same maner, and for the same cause it is, where a man letteth lande to another for terme of his life, the remainder to another for

me grant the reuersion of his tenant for term
of life to another by fine, the reuersion passeth
presently to the grantee by force of the fine,
but the grantee shall neuer haue action of waste
without attornment &c. But yet if the tenant
for terme of life alien in fee, the grantee may
enter &c. for this that the reuersion was in him
by force of the fine, and such alienation was to
his disheritance. But in this case where the
lord graunteth the services of his tenaunt by
fine, if the tenant die, his heire being of full age,
the grantee by the fine shal not haue the relief,
nor neuer shall distraine for the relief, except
there had ben some attornement of the tenant
that men &c. for of such things that lye in
priuitie, vpon the which a writ of Replegia-
re is sued &c. a man ought to know the taking
good and righteous &c. there ought to ben at-
tornement of the tenant, and howbeit that the
grant of such services be by fine. But to haue
ward of landes and tenements is holden barring
the nonage of the heire, or them to haue by
force of escheat, there neteth not any distresse
&c. but an entre in the land by force of the right
of the seigniory that the grantee hath by force
of the fine.

Also, in ancient Boroughes or Cities
where tenements within the same boroughes
or Cities ben deuisable by testament by the
custome and the vsage, if in such borough or
citie a man be seised of rent seruice or of rent
charge, and he deuiseth such rent or seruice to

deuiseth by Testament and dieth &c. In this case he to whome the deuise is made may distrein for the rent of the seruices behind, notwithstanding that the tenant neuer attourned. In the same manner it is where a man letteth such tenements deuisable to another for terme of life, or for terme of yeres, and deuiseth the reuersion by his testament to another in fee or in fee tail, and dieth, and soone after that the tenant maketh waste, he to whome the deuise was made shall haue a writ of waste: notwithstanding that the tenant neuer attourned, and the cause is for this that the will of the deuisor made by the testament, shall be performed after the intent of the deuisor, and if the effect of this should lie vpon the attourning of the tenant: for then perchance the tenant would neuer attorne, and thereby the will of the deuisor should neuer be performed, and therefore the deuisee shall distrain or haue an action of waste without attornement. Item, if a man deuise such tenements to another by his testament (habendum sibi imperpetuum) and dieth, and the deuisee entereth, he hath a fee simple, Causa qua supra, and yet if a deed of feoffement were made vnto him by the deuisor of the same tenements (habendum & tenend. sibi imperpet.) if liuery and seisin were neuer the reupon made, he shall haue none estate but for terme of life &c.

Also, if a man seised of a seigniory worth 40 li. per ann. in demaine, and parcell of the tenancy, and thereof be diseised, but the remainder

which holdeth of the manor, ... attorneth to the diffeisee in this sort, notwithstanding the diffeisor die &c. and his heire entre by discent, yet may the diffeisee distreyn for the rent being behinde, & haue the services: but if tenants come to the diffeisor & say nothing, but come, your tenants &c. or otherwise make attornment to him &c. and after the diffeisor dieth seised &c. then the diffeisee may not distreyn for the same, for then that all the mannor discended to the heire of the diffeisor. But if one holdeth of me by seruit seruice, which is a service in grosse, and another that no right hath, claimeth the seruit and receiueth and raiseth the same rent of my tenant by co-uenient of diuerse, or by other sum and so diffeiseth me by taking that rent, notwithstanding that such a taking be seised by such taking of the rent, yet may this wel distreyne for the same rent being behinde before the death of the taker and after his death, and the cause is this, for such is not my diffeisor but by claime only, for notwithstanding that he took the rent of my tenant, I may at all times distreyne my tenant for the rent behinde &c. so it is to me but as if I had suffred the tenant to be by so much time behind of paiment to me of the same rent, for the payment of my tenants to another &c. to him he ought not to pay, is no diffeisin to me, nor shall not put me out of my seruit without my speciall assent and election, for howbeit that I may haue action against such a taker &c. yet this is at my election if I will take him or

my

## Diſcontinuance.

Diſcontinuance is an vſuall word in the Law, and hath diuers ſignifications: as when an eſtate vnlawfully gotten, is diuerſly diſcontinued or ſeuered, or when the heire diſcontinues the poſſeſſion, that his father or predeceſſor had, by his entry into the ſame, or by his action, or by receiuing the rent, or ſeruice of the tenant after the deceaſe of him that is ſeiſed of the ſame eſtate. If a man by his deede doe diſcontinue his eſtate, and the deede be not good enough, and ſufficient by ſuch graunt to paſſe the eſtate, or the eſtate be in the graunter at the time of the diſcontinuance, or if he haue the reuerſion of the eſtate, and the diſcontinuance be made by feoffment, with warranty, and no aſſets deſcend vpon the heire, then the diſcontinuance doth not diſturbe the poſſeſſion of the grantee, but he may enter into the land againſt the feoffor, and his heire, notwithſtanding the warranty. Alſo if a man haue a rent charge, or rent ſeruice iſſuing out of land, and the tenant attorneth: if the graunt be good enough, and the ſeruices by ſuch graunt ſo attorned, diſcontinued be in the graunter at the time of the attornment, or if he haue the reuerſion of the ſeruices, and the diſcontinuance be made by feoffment, with warranty, and no aſſets deſcend vpon the heire, then the diſcontinuance doth not diſturbe the poſſeſſion of the grantee, but he may diſtraine for the ſeruices, notwithſtanding the warranty, and in the caſe before ſaid.

## ¶ Diſcontinuance.

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If tenant in fee simple of lands &c. in the right of his wife &c. and the wife entereth on other &c. and dieth, the wife may not enter, but she is put to her action, the which is called Cui in vita. See stat. 32. H. 8. c. 28. leases.

If tenant in the taile of certaine lands doth make a feoffment another &c. and hath issue and he the same issue may not enter in the lands, but the issue hath right and title to that, but that he is put to his action, that is called a discontinuance in the nature.

If there be tenant in the taile, and the reuersion is to the donour and to his heirs, if the tenant in taile make a feoffment &c. and dieth without issue, he in the reuersion may not enter, but is put to his action &c. Discontinuance in the reuersion, and in the same manner &c. where the tenant in taile of any land whereof he is seised in fee taile, &c. to another and his heirs, &c. and after the tenant in the taile alieneth in fee simple &c. and after dieth without issue, he in the remainder may not enter, but is put to his writ &c. Discontinuance in the remainder &c. and for this that by force of such feoffment and such alienations in the cases aforesaid, and in like cases those which have title and right after the death of such feoffors or alienors may not enter, but be put to their actions &c. vide. And because such feoffments and alienations be called discontinuances.

If a tenant in the taile be disseised, & he releaseth by his deed to the disseisour, & to his heirs

[illegible] the state, both for term of his life [illegible]
[illegible] a tenant for life by his deede [illegible]
[illegible] to another all his estate that he hath in [illegible]
[illegible] tenements retaining to him, his heirs and [illegible]
[illegible] services to the chief and to his heires [illegible]
[illegible] rents & reservations (as before) exceeding. In this case the tenant for terme of life may [illegible] both these other estates but for terme of life of the tenant in tayle, and so it may well be granted that the tenant in the tayle may not grant no other nor make any wrongfull estate of the freehold tenement to an other person during terme of his owne life &c. Also if I grant certaine lands in the tayle to a man, saving the reservations, and after the tenant in the tayle suffereth me to [illegible] the profits both no right accrue to the tenements, for two causes. One is for that that by such sufferance my reversion is not discontinued, for it is a passing act and not a rightfull act. Another cause is, if the tenant dies, and his issue enter, I may have a Formedon against the issue, for such shall be such like declaration, & the issue [illegible] may have his entry & [illegible] by [illegible] &c.

Also, if land be let to a man for terme of his life, the remainder to another in the tayle if he in the remainder shall grant his remainder to another in fee by his deede, and the tenant for terme of life attorneth, this is no discontinuance of the remainder.

Also if a man hath tenant in the tayle of [illegible] in gross or of common in gross, if he

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93 ++

[illegible] that the father dieth not seised by force
[illegible] at the time of the feoffment &c. but
[illegible] by disseisin made to the grā-
[illegible]

Also if a woman inheritrix have an husband
[illegible] age, which maketh a feoffement of the
[illegible] of the wife and dieth, it hath been
[illegible] if the wife may enter or not. And it
[illegible] in some men ſ. the entrie of the wife
[illegible] the death of her husband shall be lawfull
in this case, for when her husband made such
a feoffement &c. he might well enter notwith-
standing such feoffement during ſ coverture,
and he might not enter in his owne right, but
in the right of his wife &c. Ergo such right
that he had to enter in the right of his wife
and that right of entrie abideth to the wife &c.
after his decease, and it hath been said, that if
tenant in demaunde being within age, make a fe-
offement in fee, and one of the children dieth, &
the other surviveth, in so much that both chil-
dren might enter ioyntly in their lines, this
right of entrie groweth all to him that survi-
veth, and he may enter into the whole &c.

Also, the heirs of the husband that made the
feoffement [illegible] age may not enter, for this ſ
no right he descendeth to such an heire in ſ case
aforesaid, for this that the husband had neuer
any thing but in ſ right of his wife. And also
such a child maketh a feoffement &c. being with-
in age, this shall never grieve nor hurt him
but that he may well enter &c. and this should
be

the fee of the right of his church to another & his heirs & dieth, that his heirs shall may enter & recover the same: for then, when the grantor & his heirs & successors &c. in right of the church hath no right of the fee simple in the tenements; but the right of the fee simple thereof abideth in an other person. And for this cause his successor may well enter, notwithstanding such alienation &c. for a Bishop may have a writ of right of tenements of right of his bishoprick, for this is right of fee simple abideth in him and in his chapter: and a Dean may have a writ of right &c. by this that the right abideth in him and in his chapter, and an Abbot may have a writ of right, for this that the right abideth in him & in his convent, & sic de aliis casib. consimilibus &c. but a person, or Vicar may not have a writ of right &c. but the highest writ that they may have is a writ de iure suo, the which is a great proof that the right of fee simple is in absence, that is to say, all only in the remembrance, entendement and consideration of the law, for me seemeth that such a thing in such a right that is said in diverse books to be in abeyance, is as much to say in law, alio res vel tale testimonium vel quod res est in dominio alterius superstitis, sed tamquam modo esse & consistit in consideratione & intelligentia legis &c. & quidem alii dicerunt tales memoriam vel tale reclamum fore in talibus &c.

But I suppose that they understand these words in such like &c. as I have said before.

Also, if a parson of a church die, whose the franke-

franktenement of the glebe of the perſonage is in no man, during the time that the perſonage is void, but is in abeyance, that is to ſay, in conſideration and intelligence of the law vntil another be made parſon of the ſame Church, and immediatly vpon another is parſon, the franktenement in deed is to him as ſucceſſor.

Alſo, ſome men peraduenture will argue and ſay, that in ſo much as the parſon with aſſent of the patron and ordinary, may graunt a rent charge out of the glebe of his perſonage in fée, & ſo charge the glebe of his perſonage perpetually, ergo they haue fée ſimple, or a.or.t. of the hath fée ſimple at the leaſt &c. to this it may be anſwered, that it is a principal in law, that of euery land there is a fée ſimple in ſome man, or elſe the fée ſimple is in abeiãce &c. And another principall is, that euery land of fée ſimple may be charged with a reſt charge in fée, by one way or by another &c. and when ſuch rent is granted by the aſſent of the parſon, the patron & the ordinary in fée, none that haue no eſtates nor eſſe by force of ſuch graunt: but the graunttors in their lines, and the heirs of the patron, and ſucceſſors of the ordinary after their reſpectiues, & after ſuch charge of the parſon die, the ſucceſſor may not come to the ſame church to be parſon of the ſame church by the law: but by preſentment of the patron and admiſſion and inſtitution of the ordinary &c. And for this cauſe it behoueth that the ſucceſſor hold him content and agreed with that which his patron and or-

dis-

ordinary lawfully haue done before. But the
cause that such rent charge is gone, is for this,
that they which haue entries in y land church,
that is to say, the patron after the law temporal,
and the ordinarie after the law spiritual,
were assented as parties vnto such a charge,
&c. and this is meeth the very cause that such
rents may be charged in perpetuity &c. Mich
ter. 33. Eliz. cap. 20.

Also if a bishop alien lands which haue pas-
sed his bishoprick, & dieth, this is a discon-
tinuance to his successor, for this, that he may
not enter, but is put to his writt De ingressu
sine assensu capituli &c. Mich ter. 1. Eliz.

Also if a Deane alien land parcel of his deane-
rie, and dieth, his successor may not enter, but
he may haue a writt De ingressu sine assensu
capituli &c. Mich ter. 13. Eliz. cap. 10.

But if the Deane & the chapter haue land to
them and to their successors in common &c. howe-
beit that the deane alien such lands, his succes-
sors may well enter, for this that the freehold
remaineth at y time of the alienation, euen as
in the Chaucer as in the deane. But where the
Deane de iure seised as incident of his Deanery,
there such alienation is discontinuance to
his successour, as it is aforesaid. Also some
men doe argue and say, that if an Abbot and
his convent be seised in their demesne as of fee
of certain lands to them and to their successors
&c. and the Abbot without assent of his Con-
vent alieneth the same lands vnto an other,

and

Also if the maister of an Hospitall discontinue certaine land of his hospitall, his successor may not enter, but he is put vnto his writ De ingressu sine assensu confratrum & sororũ suarum. And all such writs do plainly appeare in the Register &c.

## Remitter.

REmitter is an ancient terme in the law, and it is where a man hath two titles to lands or tenemẽts, that is to say, if one of an elder title, & an other of a latter title, and he commeth to the land by the latter title, yet the law adiudged him to be in by force of the elder title, for this, that the elder title is the more sure title, and the more worthy title, and then when a man is iudged in by force of the more elder title, this is vnto him said a Remitter, for this, that the law shall admit him to be in the land by the elder title: as if the tenaunt in the taile discontinue the taile, & after he disseiseth his discontinuee, & so dieth seised, whereby the tenemẽts discend to his issue, as to his colme inheritable by force of the taile: in this case this is to him to whom the tenemẽts discend which had right by force of the tail, a Remitter in the taile taken, for that, that the law shall put & adiudge him to be in by force of the taile, which is his elder title: for if he shalbe in by force of discent, then the discontinuee may haue a writ of Entre vpon the disseisin in the per against him, & recouer the tenements, and

his dãmages, but in so much that he is in by force of the tayle, the title and the interest of the discontinuee is all vtterly adnulled and defeated &c.

Also if tenaunt in taile infeoffe in fee his sonne or his cosin inheritable by force of the taile, the which sonne or cosin at the time of the feoffement is within age, and after the tenant in the taile dieth, and he to whome the feoffement was made is his heire by force of the title in the taile, this is a Remitter to the heire in the taile, to whom the feoffement is made: For howbeit that during the life of the tenant in the taile that made the feoffement, such heir shalbe adiudged in by force of the feffment, yet after the death of the tenant in the taile, ỹ heir shalbe adiudged in by force of the taile &c. and not by force of the feoffement, and though that such an heire was of full age at the time of the death of the tenant in the taile that made the feoffement, this maketh no matter if the heire were within age at the time of the feoffement made to him And if such an heire being within age at the time of the feoffement cõmeth to full age, liuing the tenant that made the feoffement, & so being of full age, he chargeth by his deed the same land with a common of pasture, or with a rent charge, and after the tenaunt in the tayle dieth. Now it seemeth that the land is discharged of the common, and of the rent, because the heire is in by another estate in the lande, then he was at the time of the charge made,

saile, in so much that he is in his remitter by force of the taile, and so the estate that he had at the time of the charge is vtterly defeated &c

Also a principall cause why such an heire in the cases aforesaid, and other cases semblable shall be said in his Remitter, is for this, that there is no person against whom that he may sue his writ of Formedon, for against himself he may not sue, & he may not sue against none other, for none other is tenant in the fraktenement, and for that cause the law adiudged him in his remitter, that is to say, in such plight, as he had lawfully recouered the same lands against another.

Also, if land be tailed to a man and his wife, and to the heires of their two bodies ingendred, the which haue issue a daughter, and the wife dieth, and the husbande taketh another, and hath issue another daughter and discontinueth the taile, and after he disseiseth the discontinuee, & so dieth seised, now the lande discendeth to the two daughters: In this case is to the elder daughter that is inheritable, thus is a remitter but of the halfe, & as to the other halfe, that is put to her action of Formedone against her sister, for in this case two sisters be not tenaunts in parcenary, but be tenants in common, for this that they be in by diuers titles, for the one sister is in her Remitter by force of the taile, as to that, that vnto her belongeth: And the other sister is in as to that that belongeth to her in fee simple by the

his dāmages, but in so much that he is in by force of the taile, the title and the interest of the discontinuer is all vtterly annulled and defeated &c.

Also if tenaunt in taile infeoffe in fee his sonne or his cosin inheritable by force of the taile, the which sonne or cosin at the time of the feoffement is within age, and after the tenant in the taile dieth, and he to whome the feoffement was made is his heire by force of the title in the taile, this is a Remitter to the heire in the taile, to whom the feoffement is made: For howbeit that during the life of the tenant in the taile that made the feoffement, such heir shalbe adiudged in by force of the feffement, yet after the death of the tenant in the taile, & heir shalbe adiudged in by force of the taile &c. and not by force of the feoffement, and though that such an heire was of full age at the time of the death of the tenant in the taile that made the feoffement, this maketh no matter if the heire were within age at the time of the feoffement made to him And if such an heire being within age at the time of the feoffement cōmeth to ful age, liuing the tenant that made the feoffement, & so being of full age, he chargeth by his deed the same land with a common of pasture, or with a rent charge, and after the tenaunt in the taile dieth. Now it seemeth that the land is discharged of the common, and of the rent, because the heire is in by another estate in the lande, then he was at the time of the charge made,

saine, in so much that he is in his remitter by force of the taile, and so the estate that he had at the time of the charge is utterly defeated &c

Also a principall cause why such an here in the cases aforesaid, and other cases semblable shall be said in his Remitter, is for this, that there is no person against whom that he may sue his writ of Formedon, for against himself he may not sue, & he may not sue against none other, for none other is tenant in the freehold, and for that cause the law adiudged him in his remitter, that is to say, in such plight, as he had lawfully recouered the same lande against another.

Also, if land be tailed to a man and his wife, and to the heires of their two bodies ingendred, the which haue issue a daughter, and the wife dieth, and the husbande taketh another, and hath issue another daughter and discontinueth the taile, and after he disseiseth the discontinuee, & so dieth seised, now the lande discendeth to the two daughters: In this case as to the elder daughter that is inheritable, this is a remitter but of the halfe, & as to the other halfe, shee is put to her action of Formedone against her sister, for in this case two sisters be not tenaunts in parcenary, but be tenants in common, for this that they be in by diuers titles, for the one sister is in her Remitter by force of the taile, as to that, that vnto her belongeth: And the other sister is in as to that that belongeth to her in fee simple by the

diſcent of her father: In the ſame maner it is if the tenant in the taile infeoffe his heire apparant in the taile, the heir being within age, and another iointenãt in fee, and the tenant in the taile dieth: Now the heir in the taile is in the Remitter, as to the halfe, and as to the other half he is put to his writ of Formedõ &c.

Alſo if a tenant in the taile infeffe his heire apparent, the heir being at full age at the time of the feffement, & after the tenant in the taile dieth, this is no Remitter to the heire, for this that it was his own folly, that he being of full age would take ſuch feoffement &c. But ſuch folly may not be adiudged in the heire being within age at the time of the feoffement &c.

Alſo if a tenant in the taile infeoffe a woman in fee and dieth, & his iſſue within age taketh the woman to wife, this is a Remitter to the child, and the wife then hath nothing, for this, that the husband & the wife be but one perſon in the law. And in that caſe the husband may not ſue a writ of Formedon, vnleſſe he will ſue againſt himſelfe, the which ſhalbe inconuenient, and for that the lawe iudgeth the heire in his Remitter, for this, that no folly may be aretted to him being within age at the time of the eſpouſals &c. And if the heire be in his Remitter by force of the taile, it followeth by reaſon that the wife hath nothing &c. for in ſo much that the husband & the wife be but one perſon, the land may not be ſeuered by halfes, and for ſuch cauſe the husband is in his Remitter of

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the whole. But otherwise it is, if such an heir is of full age at the time of the spousals, then the heire hath nothing but in the right of his wife.

Also if a woman seised of certaine lande in fe taketh an husbande, the which alieneth the same lande to another in fee, and the alienee letteth the same lande to the husband and the wife for terme of their two lines, saving the reuersion to the lessor, and to the heire, in this case the wife is in her Remitter, and shee is seised in deed in her demeane as in fee, as shee was before, for this, that the taking of estate shalbe adiudged in the law the deed of the husband, and not the deed of the wife, so that no fault may be iudged in the wife that is couert in such case. And in this case the lessour hath nothing in the reuersiō, for this that the wife is seysed in fee. But in this case if the lessor will sue an action of waste against the husband and his wife, for this that the husbande hath made waste, the husbande may not barre the lessour for to shewe this, that the taking of estate made vnto him and to his wife made a Remitter to his wife, for this that the husband is stopped to say this against his feoffement and owne repriseil of estate for terme of life to him and his wife, and yet the lessour hath no reuersiō, for this that the fee simple is in the wife. So a mā may see a matter in this case, that a man shall be estopped by a matter in deede though no writing by deede indented

ted or other wise be thereof made. But if in an action of waste the husbande makes default at the grand distresse, and the wife prayeth to be receiued, and is receiued, she shal wel shew all the matter, and how she is in her Remitter, and shal barre the lessor of his action: For in euery case that the wife is receiued for default of her husband, she shall plead and haue the same aduantage in pleading, as she were a woman sole. And howbeit that the alyenee made no lease to the husband and his wife by deede inuented, yet this is a Remitter to the wife, and though the alienee yelded the same lande to the husband and his wife by fine for terme of their liues, yet this is a Remitter to the wife, for this that the wife couert that taketh estate by fine shall not be examined by the Iustices. And here note well, that when any thing shall passe from the wife that is couert of husband by force of a fine, as the husband & wife make conusance of right to another &c. or make a grant to yeld to another, or release by a fine to another, Et sic de similibus, where the right of the wife passeth from the wife by force of the same, the wife in all such cases shall bee examined before that the fine be accepted. And such fines conclude such wines couert for euer. But where nothing is moued in the fine, but all onely that the husband & the wife take estate by force of the same fine, this shall not conclude the wife, for this that in such case she shalbe neuer examined.

Also

Also if tenant in the taile discontinue in the taile, & hath a daughter & dieth, & the daughter being of ful age taketh an husband, and the discontinuee maketh a lease of this to the husband & his wife for terme of their liues, this is a Remitter in deed to the wife, and the wife is in by force by the taile, Caula qua supra.

Also if lande be giuen to the husband & his wife, to haue and to holde to them and to the heires of their two bodies begotten, and after the husband alieneth the land in fee, & taketh againe an estate to him & to his wife for terme of their two liues. In this case this is a Remitter in deede to the husbande and the wife mauger the husbande, for it may not be a Remitter to the wife, except it be a Remitter to to the husband, for this that the husband & his wife be but one person in the law, though that the husband is stopped to claime this to be a Remitter in him against his alienation, and his owne repriſell, as is afore ſaid.

Also if lande be giuen to a woman in the taile, the remainder to an other in the taile, the remainder to the third in the taile, the remainder to the fourth in fee, and the wife taketh an husband, & the husbād discontinueth the land of his wife, by this discōtinuāce al ꝑ remainders be discontinued, for if the wife die without iſſu, they in ꝑ remainder shall haue no remedy, but to sue their writs of Formedon in the remainder whē they come to their time &c. But if after such discontinuance, estate be made to

the husbande and his wife for terme of their two lines, or for terme of an other lyfe, or an other estate &c. for this, that this is a Remitter to the wife, this is a Remitter to all those in the remainder &c. For after this that the wife, that is in her Remutter, dieth without yssu, they in the remainder may enter &c. without any action or suit &c. In the same manner it is of them which have the reuersion after such tayle &c.

Also, if a man let a house to a woman for terme of her lyfe, saying the reuersion to the lessour, and after one sueth a faynt and false action against the woman, and recouereth the house against her by default, so that the woman may have against him a writ of Quod ei deforceat, after the Statute of Westm. the second cap. 4. nowe is the reuersion of the lessour discontinued, so that he may have no action of waste. But in this case if the woman take an husbande, and he that recouereth letteth the house to the husbande and his wife for terme of their two lines, the wife is in her Remitter by force of the first lease. And if the husbande and the wife make waste, the firste lessour shall have against him a writte of waste for this, that in so much that the wife is in her Remitter, he is remitted to his reuersion. But it seemeth in this case, if he that here cōmeth by the false action, will bring an other writte of waste against the husbande and his wife, the husbande hath no remedie against him,

him, but to make default at the great distresse &c. And to cause the wife to bée receyued and taplede the matter against the second lessour, and to shew that the action by which he recouered was false and fayned in the law, and so the wife may barre &c.

Also, if the husbande discontinue the land of his wife, and after taketh estate to him and to his wife, and to the thirde man for terme of their lines, or in fée, this is a Remitter to the woman but as to the mottie. And as for the other mottie it behaueth her after the death of her husband to sue a Cui in vita.

Also if the husband discontinue the land of his wife, and go ouer the sea, and the discontinuee let the same land to the woman for terme of lyfe, and deliuer to her seysin, and after the husbande commeth and agreeth to that liuery of seysin, this is a remitter to the woman, and yet if the woman had béene sole at that tyme of her lease made to her, this should bée to her a Remitter, but in so much as she was couert baron, at the time of the lease, and the liuerie of seisin made to her, though that she only take the liuery of seysin, this was a Remitter to her, because a woman couert shalbe adiudged as an infant within age in such case &c. Enquire in this case if the husbād when he commeth againe will disagree to the lease and liuerie of seysin made to his wife in his absence, if this shal put the woman from her Remitter.

Also if the husband discontinue the tenements

ments of his wife, and the discontinuee is disseised, and after the disseysor letteth the same tenemẽts to the husband & his wife for terme of life, this is a remitter to the wife, but if the husbãd and the wife were of couin or consent that the disseisin should be made, then it is no remitter to the wife, because shee is a disseysouresse. But if the husband were of couin & consent to the disseisin and not the wife, then such lease made to the wife is a Remitter, because that no default was in the wife.

Also, if such a discontinuee had made estate of freehold to the husband and the wife, made by inventure vpon condition.s. reseruing to the discontinuee a certein rent, and for default of payment a re entre, and because that the rent is behind the discontinuee entreth, of this rent the womã shal haue assise of nouel disseisin, after the death of her husband against ỹ discontinuee, because that the condition was wholly annulled, in so much as the womã was in her remitter, yet the husband with his wife could not haue assise because the husband is stopped.

Also if the husband discontinue the tenements of his wife, and taketh estate againe for terme of his life, the remaynder after his decease to his wyfe for terme of her lyfe, in this case this is no Remitter to the wyfe during the lyfe of her husband, because that during the lyfe of the husband, the wyfe hath nothing in the freehold, but if in this case the wife ouerliue the husband, this is a Remitter

to

to the wife, because that a freehold in law is fallen vpon her mauger her will, & in so much that she can haue no action against none other person, and against her selfe shee can haue no action, therefore she is in her Remitter, for in this case though that the woman enter not the tenements, yet a stranger that hath cause to haue action may sue his action against the woman of the same tenements, because she is tenant in law, though shee be not tenaunt in deede, for tenant of franktenement in deede is he, that if he be disseised of franktenemēt may haue Assise, but the tenant in the lawe before his entre shall haue no assise, & if a man seysed in fee of certain land hath issue a sonne which taketh a wife, and the father dieth seised, and after the sonne dieth before any entre made by him into the land, the wife of the sonne shalbe endowed in the land, & yet he had no franktenement in deed, but he had a fee & a franktenement in law, & so note well ℣ a Præcipe quod reddat may be as wel maintained against him that hath the franktenemēt in law, as against him that hath franktenement in deede.

Also if a tenaunt in the taile haue issue two sonnes of full age, and he letteth the tayled lande to the elder sonne for terme of his life, the remainder to the yonger sonne for term of his life, and after the tenant in the taile dieth, In this case the elder son is not in his remitter, because he toke estate of his father, but if the elder son die without issue of his body, then this

this is a remitter of ỹ ponger brother, because he is heir in the taile, and a franktenement in law is fallen vpon him by force of the remainder, and there is none against whom he may sue his action &c. In ỹ same maner it is where a man is disseised, and the disseisor dieth therof seised, and the tenementes discend to his heire, and the heire of the disseisor maketh a lease to a man of the said tenements for terme of life, the remainder to the disseisor for terme of life or in taile, or in fee, and the tenaunt for terme of life dieth, now this is a Remitter to the disseisee &c. Causa qua supra.

Also if a tenant in the taile enfeffe his sonne and an other of the tayled lande in fee, and liuery of seisin is made to the other according to the deede, the sonne not knowing thereof, nor agreeing to the feoffement, and after hee that toke the liuery of seisin dieth, and the sonne occupieth not the lande, nor taketh any profite of the lande during the life of his father, and after the father dieth, now this is a Remitter to the sonne, because the freehold is fallen vpon him by the surrenor, and no default was in him, because he neuer agreed &c. in the life of his father, and there is none against whō he may pursue his writ of Formedone &c. For if a man be disseised of certains land, and the disseisor maketh a deede of feffement, whereof he enfeoffeth B. C. and D. and the liuery of seisin is made to B. and C. but D. was not at the liuery of seisin, nor neuer

agreed

agréd to the feoffement, nor neuer would take the profits &c. And after B. & C. die, and D. ouerlineth them, and the disseisée bringeth his writ sur disseisin in the Per, against ý same D. he shall shew all the matter, and how that he neuer agréd to the feoffement, and so he shall discharge himselfe of damages, so that the demandant shal recouer no damage against him, though that he be tenant of franktenement of the land. And yet the statute of Glocester will, that the disseisee shal recouer damage in a writ of entre, grounded vpon the nouel disseisin against him that is found tenant. And this is a proofe in the other case, that in so much as the issue in the taile commeth to the franktenemẽt not by his déed, nor by his agréement, but after the death of his father, this is a Remitter to him, in so much that he can sue an action of Formedon against none other person.

Also if an Abbot alien the land of his house to another in fée, and the alienée by his déede chargeth the land with a rent charge in fée & after the alienée enfeoffeth the Abbot with licence, to haue and to holde to the Abbot and his successors for euer, and after the Abbot dieth, and another is chosen and made Abbot: In this case the Abbot that is successor & his couent be in their Remitter, and shal holde the land discharged, because that the same Abbot cannot haue an action by his writ of Entre sine assensu Capituli, of the same lands against none other person. In the same manner it is

where

where a Bishop or dean, or other such person alien &c. without assent &c. And after the Bishop taketh estate againe of the same lande by licence to him, and to his successors, and after the Bishop dieth, his successor is in his Remitter as in the right of his church, and shall defeat the charge &c. Causa qua supra.

Also, if a man sue a false action against tenant in the taile, as if a man will sue against him a writ of entre in the Post supposing by his writ that the tenaunt in the tayle had not his entrie but by A. of B. that disseised the graund father of the demaundant, and that is false, and he recouereth against the tenant in the taile by default, and sueth execution, and after the tenant in the tail dieth, his issue may haue a writ of Formedon against him that recouered, and if hee will pleade the recouery against the tenaunt in the taile, the issue may say, that the saide A. of B. disseised not the graund father of him that recouered in such maner as his writ supposeth, and so he shall satisfie his recouery. Also, suppose that that was true, that the said A. of B. disseised the graund father of the demandant that recouered, and that after the disseisin the demandant or his father, or his graund father by a deede had released to the tenant in the taile, all the right that he had in the land &c. And this notwithstanding he sueth his writte of entre in the Post against the tenant in the taile, in the manner as is aforesaid, and the tenaunt in the

taile

taile pleadeth to him, that the saide A. of B. disseiseth not his graund father, as his writ supposeth: and vppon this they be at issue, and the issue is founde for the demaundant, whereby he hath iudgement to recouer and sueth execution, and after the Tenaunt in the taile dyed, his issue may haue a writte of Formedon against him that recouered. And if he will pleade the recouery by action tried against his Father tenant in the taile, then he may shew and plead the release made to his Father, and so the action that was sued was faint in the law &c.

And it seemeth that faint action is as much to say in English, as fayned action that is to say, such action, that though the wordes of his writ be true, yet for certaine causes he hath no cause nor title by the lawe to recouer by the same action. And false action is, where the wordes of the writ be false: and in the two cases before saide, if the case were such, that after such a recouerie and execution thereof made, the tenant in the taile had disseysed him that recouered, and thereof died seised, whereby the lande also discended vnto his issue, this is a remitter to the issue, and the issue is in by force of the tayle: and for that cause I haue put these two cases aforesayd, to informe thee (my sonne) that the issue in the tayle by force of a discent made to him after a recouerie and execution thereof made against his auncester, may be as well in his remitter,

as

as he should be by discent made to him after a discontinuance made by his auncestor of the tailed land by feoffement in the countrey, or otherwise.

Also, in the same case aforesaid, if the case were such, that after the demandant had iudgment to recouer against the tenant in tail, and the same tenant in the tail died before any execution had against him, whereby the tenements discend to his issue, and he that recouered sued a Scire facias to haue execution of the iudgement against the issue in the taile, the issue shal plead the matter, as before is said, and so shall proue that the recouery was false or faint in the law, and so shall barre him to haue execution of the iudgement &c.

Also, if the tenant in the taile discontinue the taile and die, and his issue bringeth a writ of Formedon against the discontinuée beyng tenant of the freehold of the land, & the discontinuée pleadeth that he is not tenant, but otherwise disclaimeth from the tenancy in the land: in this case the iudgement shalbe, that the tenant goe without day, & after such iudgement the issue in the taile ꝑ is demandant may well enter in the land, notwithstanding the discontinuance. And by such entre he shalbe adiuged in his Remitter, & the cause is, because that if any man sue a Præcipe quod red. against any tenant of freehold, in which action the demandant shal not recouer damages, and the tenant pleaded not Nõtenure, but otherwise disclay-

meth

meth in the tenancy, the demaundant may not auerre in the writ, that he is tenant as ỹ writ suppoſeth. And for that cauſe the demandant after that the iudgement is giuen, that the tenant ſhall goe without day, may enter into the tenements demaunded, the which ſhall be as great aduantage to him in the law, as if he had iudgement to recouer againſt the tenant. And by ſuch entre he is in the Remitter by force of the taile: but where the demandant recouereth dammages againſt the tenant, there the demaundant may auerre that he is tenant as the writ ſuppoſeth, and that for the aduantage of the demaundant for to recouer his dãmages, or els he ſhal not receiue his dãmages, the which dammages he or were giuen him by the law.

Alſo, if a man be diſſeiſed, and the diſſeiſour die his heire being in by diſcent, now the entre of the diſſeiſee is taken away. And if the diſſeiſee bring his writ of entre vpon the diſſeiſin in the Per againſt the heire, and the heire diſclaimeth in the tenancy &c. the demaundant may auerre his writ that he is tenant as the writ ſuppoſeth if he will, for to recouer his dãmages. But yet if he will leaue the auerment &c. he may lawfully enter into the lãd, becauſe of the diſclaimer notwithſtanding that his entre before was taken away. And that was adiudged before my Maiſter ſir Robert Danby late chiefe Iuſtice of the cõmon place, and his Companions. 5. E. 4. fol. 1. & 45.

Also, where the entre of a man is lawfull, though that he take estate to him when he is of full age for terme of life, or in taile, or in fee, this is a Remitter to him, if such taking of estate bee not by deede indented, or by mater of record that shal conclude or stop him: For if a man be disseised, & thereof taketh estate of the disseisor without deede, or by deede Poll, that is a good Remitter of the disseisee.

Also, if a man let land for terme of life to another which alieneth to another in fee, & the alienor maketh estate to y lessor, this is a remitter to the lessor, because his entre was lawful.

Also, if a man be disseised, and the disseisor letteth the land to the disseisee by deed Poll, or without deede for terme of yeres, whereby the disseisee entreth, this entre is a Remitter to the disseisee: for in such case where the entre of a man is lawful, and a lease is made to him, though that he claime by wordes in the countrey, that he hath estate by force of such lease, or saieth openly that he claimeth nothing in the lande, but by force of such lease, yet this is a Remitter to him, for such claime in the countrey is nothing to purpose: but if he claime in a court of Record that he hath estate but by force of such leas and not otherwise, then he is concluded &c.

Also, if two fointenauntes seised of certaine land in fee, the one being of full age, the other within age be disseised, and the disseisor dieth seised and his sonne entreth, the one of the fein-

tenants being there within age, and after that he commeth to full age, the heir of the diſ-ſeiſee letteth the land to the ſame tenants for terme of their lines, this is a Remitter as to the halfe to him that was within age, becauſe that he is ſeiſed of the moity that belongeth to him in fee, becauſe his entre was lawful. But the other tenant hath in the other halfe but eſtate for terme of life by force of the leaſe, becauſe his entre was taken away &c.

## Warrantie.

IT is commonly ſaid that there be two manner of warranties, that is to ſay, warranty lineall, warranty collaterall, and warranty that beginneth by diſſeiſin. And it is to wit, that before the ſtatute of Gloucester all warranties which diſcended to them which were heires to them that made the warranty, were bars to the ſame heires to demand any lands or tenements againſt thoſe warranties, except the warranties that began by diſſeiſin, for ſuch warranty was never bar to the heire becauſe the warranty began by wrong, that is to ſay, by diſſeiſin.

A warranty that beginneth by diſſeiſin is in ſuch ſome: as where there is father and ſon, and the ſon doth purchaſe land &c. and letteth the ſame land to his father for terme of yeres, & the father by his deed thereof enfeoffeth another in fee, and bindeth him and his heires to

warranty, & if the father die whereby ꝑ warranty discendeth to his son, this warrãty shall not bar the son, for notwithstanding this warrãty, the son may well enter into the land, or haue an assise against the alienee if he will, because the warranty began by disseisin. For when ꝑ father that had no estate but for term of yeres made a feoffement in fee, this was a disseisin to the son of the frankstenement that then was in the son. In the same maner it is if the son let vnto the father the land to hold at will, and after the father maketh a feoffement & warranty &c. And as it is said of the father so may it be said of euery other auncestor &c.

In the same maner it is if tenant by Elegit, tenant by statute marchant, or tenant by statute staple, maketh a feffement in fee with warranty &c. this shall not bar the heire that ought to haue the land because that such warranties begin by disseisin.

Also if a warden in chiualry or warden in socage make a feffement in fee, in fee taile, or for term of life & warrãty &c. Such warranties be no bars to the heires to whom the land shal discend, because that they begin by disseisin.

Also, if the father and the son purchase certaine lands or tenements, to haue and to hold to them iointly &c. and after the father alieneth the whole to another and bindeth him & his heirs to warranty &c. and after the father dieth, this warranty shall not barre the son of the moity that belongeth to him of ꝑ same te-

nements

nomeths, because ỹ as to the moity ỹ belonged to the son, the warranty began by disseisin.

Also, if A. of B. be seised of a mease, and F. of G. ỹ hath no right to enter in the same mese clayming to hold the same mese to him and to his heires, enter into the same mese, but A. of B. then is continually dwelling in the same mese, in this case the possession of the frankte-nement shalbe alway adiudged in A. of B. and not in F. of G. because that in such case where two be in one mese, or in other tenements, & ỹ one claymeth by one title, and the other by an other title, the law shal adiudge him in possession ỹ hath right to haue the possession of the same tenement. But in the case aforesaid if F. of G. make a feoffement to certain barretours and extortioners in the countrey for to haue maintenance of them of the same mease by a deede of feoffement with warranty, by force of which the said A. of B. dare not dwell in the same mese, but goeth out of the same mese, this warranty beginneth by disseisin, because that such a feoffement was cause that the saide A. of B. left the possession of the same mese.

Also, if a man that hath no right to enter in anothers tenements, enter into the said tene-mentes, and incontinently maketh a feoffe-ment to other persons by his deede with war-ranty, and deliuereth to them seisin, this war-ranty beginneth by disseisin, because that the disseisin and the feoffement were made as it were at one time. And that this is law, ye

grey fol. 11. in a plee. Anno. 31. Ed. 3. in a writ of Formedon in the reuerſion Gart. Fitz. 28.

Warranty lineall is where a man ſeiſed of certaine landes in fee maketh a feoffement by his deede to another, and bindeth him and his heires to warranty, and hath iſſue & dieth, and the warranty diſcendeth to his iſſue, this is a lineal warranty. And the cauſe why this is a lineal warranty, is not becauſe the warranty diſcendeth from the father to his heire, but the cauſe is, becauſe that if no ſuch deede of warranty had beene made by the father, then the right of the tenements ſhould diſcende to the heire, and the heire ſhould conuey the diſcent from the father &c. For if there be father and ſonne, and the ſonne purchaſe tenementes in fee, and the father diſſeiſeth the ſonne thereof and alieneth it to another in fee by his deede, and by the ſame deede bindeth him and his heires to warrant the ſame tenementes and ſo dieth, and the father dieth, nowe is the ſonne barred to haue the ſaid tenements, for he may by no ſuite nor by any other meanes haue the ſaid tenements, becauſe of the ſaide warranty. And that is a collaterall warranty, and yet the warranty diſcendeth lineally from the father to the ſonne. But becauſe that if no ſuch deede with warranty had beene made, the ſonne in no manner might conuay the title that he hath of the tenements from his father to him, in ſo much that his father had no eſtate nor right in the tenements, there-

fore

hys such warranty is called collateral warrantie: In so much that he that made the warranty is collateral to the title of the tenements, and that is as much to say, that he to whom warranty discended, could not convey the title that he had in the tenementes by him that made the warrãty in this case, if no such warranty had bin made.

Also, if there be graundfather, father, and sonne, & the grandfather is disseised, in whose possessiõ the father releaseth by his deed with warranty &c. and dieth, and after the graundfather dieth, now is the sonne barred of the tenements by the warranty of his father, & this is called lineall warranty, because that if no such warranty had bin made, the sonne might not have conveyed the right of the tenements to him, nor shew how he is heire to the graundfather, but by meanes of the father &c.

Also, if a man have issue three sonnes and is disseysed, and the elder sonne releaseth to the disseisor by his deede with warrantie &c. and dieth without issue, and after this the father dieth, this is a lineal warrantie to the yonger sonne, because that though ỹ elder sonne died in the life of the father, yet by possibilitie it might be that he might convey to him the title of the land by his elder brother, if no such warranty had bin made: for it might be that after the death of the father, the elder brother entred into the tenementes and died without issue, and then the yonger sonne shall convey

to him the title by his elder brother. But in this case, if the yōger sonne release with warrãty to the disseisor, and dieth without issue, this is a collateral warrãty to the eldest sonne, because ꝑ of such land as was to the other, the elder brother by no possibility might convey to him the title by meane of the yonger brother.

Also, if tenaunt in the taile hath issue three sonnes, and discontinue the taile in fe, and the middle sonne releaseth by his deede to the discontinuee, & bind him and his heires to warrantise &c. and after the tenant in the taile die, and the middle dieth without issue, now is the elder sonne barred to haue any recouerie by a writ of Formedon, because that the warranty of the middle brother is collateral to him, in so much that he may by no manner cõuey to him by force of the taile any discent by the middle brother, and therefore it is a collateral warranty. But if in this case the elder brother die without issue, now the yonger brother may well haue a Formedon in the discender, & recouer the same land, because that the warranty of the middle brother is lineall to the yonger brother, because it may be, that by possibilitie the middle brother may bee seysed by force of the taile after the death of his elder brother, & then the yongest brother may convey his title of discent by the middle brother &c.

Also, if the tenant in the tail discontinue the taile, & hath issue and die, and the vncle of the issue release to the discõtinuee with warranty

and

and die without issue, this is a collateral warranty to the issue in the taile, because that the warrantie discendeth vppon the issue, which cannot conney himselfe to the tayle, by meane of his vncle.

Also, if tenaunt in the tayle hath issue two daughters and die, and the elder daughter entreth into the whole, & thereof maketh a feffement in fee with warranty, and after the elder daughter dieth without issue: In this case ỹ ponger daughter is barred, as to the moitie, & as to the other halfe she is not barred, for as to the moity that belōgeth to the ponger daughter, she is barred, because that as to the moitie that belongeth to her, she cannot conney the discent by the meanes of her elder sister, And therefore as to the moity, that is a collaterall warranty, but as to the other moity which belongeth to her elder sister, by the same elder sister the warranty is no barre to the ponger sister, because that she may conney her discēt as to that moity that belongeth to her elder, by the same elder sister: And so as to that moity that belongeth to the elder sister, the warrantie as to that is lineall to the ponger sister.

And note well, that as to him that demandeth fée simple by any of his auncestors, hée shalbe barred by lineall warrantie which discendeth vpon him, except it bée restrained by some statut, but he which demandeth fée tayle by a writ of Formedon in the discender, shall not be barred by lineall warrantie, except he haue

hane enough by diſcent in fée ſimple by the ſame anneſtor that made the warranty, but a collateral warranty is a barre to him that demaundeth fée, and alſo to him that demandeth fée tayle, without any other diſcent of fée ſimple, except in caſes that be reſtrained by the ſtatute, and other caſes for certaine cauſes, as ſhalbe ſaid hereafter.

Alſo, if lande be giuen to a man and to his heires of his bodie begotten, the which taketh a wife, and haue iſſue a ſonne betweene them, and the huſband diſcontinueth the taile in fée, and dyeth, and after the wife releaſeth to the diſcontinuée in fée with warranty and dieth, and the warranty diſcẽdeth to the ſonne, this is a collateral warrãty. But if tenements be giuen to the huſband and the wife, and to the heires of their two bodies begotten, which haue iſſue a ſonne, & the huſbãd diſcontinueth the taile, & dieth, and after the wife releaſeth & warranty and dieth, this warranty is but a lineal warranty to the ſon, for the ſonne ſhal not be barred in this caſe to ſue his writ of Formedon, except he haue enough by diſcẽt in fée ſimple by his mother, becauſe that their iſſue in a writ of Formedon ought to conuey to him the right as heire to his father and to his mother of their two bodies begotten, by forme of the gift. And ſo in ſuch caſe the warrantie of the father, & the warranty of the mother, be but collateral warranties to the heire &c. And note well, & in euery caſe where a man demandeth

with tenements in fee taile by a writ of formedon done, if any of the issues in the taile that had possession of that hath possession make a warranty &c. if he that sueth the writ of formedon might by any possibility by matter that might be in deed convey to him by him that made the warranty by the forme of the gift. This is a lineall warranty, and not collaterall.

Also, if a man have issue three sonnes, and he giueth land to the eldest sonne, to have and to holde to him and to the heires of his body begotten, and for defaute of such issue the remainder to the middle sonne, to him, and to the heires of his body begotten, and for defaute of such issue the remainder to the yongest sonne, and to his heires of his body begotten, in this case if the eldest sonne discontinue the taile in fee, and binde him, and his heires to warranty, and die without issue, this is a collaterall warranty to the middle sonne, and he shall be barred to demaund the same lande by force of the remainder, because that the remainder is his title, and his eldest brother is collaterall to the title which beginneth by force of the remainder.

In the same maner it is if the middle sonne had the same lande by force of the remainder, because that his eldest brother made no discontinuance, but dieth without issue of his body, and after the middle sonne maketh a discontinuance with warranty &c. and dieth without issue, this is a collaterall warranty to the yongest

yongeſt ſonne, & alſo in this caſe if any of the ſaid ſonnes be diſſeiſed, and the father that made the gift releaſe to the diſſeiſour all his right &c. with warranty, this is a collaterall warranty to the ſonne vpon whom the warranty diſcended, Cauſa qua ſupra. And ſo note well that where a man that is collateral to the title &c. releaſeth with warranty, that is a collaterall warranty.

Alſo, if the Father giue lande to his elder ſonne, to haue and to holde to him and to his heires males of his body begotten, the remainder to the ſecond ſonne &c. if the eldeſt brother alien in fée with warranty &c. and hath iſſue female & dieth without iſſue male, this is not a collateral warranty to the ſecond ſonne, nor ſhall not hurt him of his action by Formedon in the remainder, becauſe that the warranty diſcendeth to the daughter of the eldeſt ſonne, and not to the ſecond ſonne. For euery warranty that diſcendeth, diſcendeth to him that is heire vnto him which made the warranty by the common law &c.

Alſo, if lande be giuen to a man and to his heires males of his body begotten, and for default of ſuch iſſue the remainder therof to his heires females of his body begotten, and after the doné in the taile maketh a feoffement in fée with warranty accordingly, and hath iſſue a ſonne & a daughter and dieth, this warranty is but a lineal warranty to the ſonne, to demaunde by writte of Formedone in the diſcendre

cendre. And it is but ideal to the daughter to demaund the same land by writ of formedon in the remainder, if her brother die without heire male, because that she claimeth as heire female of the body of her father begotten. But in this case if her brother in his life release to the discontinuee with warranty &c. and after die without issue, this is a collateral warranty to the Daughter, because that she cannot convey to her the right that she had by force of the remainder by any meane of discent by her brother, and therefore the brother is collateral to the title of his sister, and therefore his warranty is collateral &c.

Also, I have heard say that in the time of King Richard the second, there was a Justice in the common place dwelling in Kent, called Rickhil, that had issue diuers sonnes: and his intent was, that his eldest sonne should haue certaine lands to him and to his heires of his body begotten, and for default of issue, the remainder to his seconde Sonne and so forth, and so the third sonne &c. and because that he would that none of his sonnes should alien or make warranty for to barre or to hurt the other that should be in the remainder &c. He causeth to be made an indenture to such effect, that is to say, that the lands and tenementes were giuen to his eldest Sonne vppon this condition, that if the eldest sonne alened in fee or in fee taile &c. or any of his sons alened &c. that then their estate should cease & should be void

heire, and that then the said landes or tenements immediatly should remaine to the second sonne, and to the heires of his body begotten, and that upon the same condition. &. that if the second sonne alien &c. that then his estate should cease, & that then the same landes and tenements should remain to the third son, and to the heires of his body begotten &c. the remainder to other of his sons, & livery of seisin was made according. But it seemeth by reason that all such remainders in the forme beforesaid be void, and of no valew, and that for three causes. One cause is because every remainder that beginneth by a deed, it behoveth that the remainder be in him to whom the remainder is tailed by force of the same deede when the livery of seisin is made to him that hath the franktenement.

And such remainder was not to the second sonne at the time of livery of seisin in the case beforesaid &c.

The second cause is, if the first sonne alien the tenements in fee, then is the franktenement and the fee simple in the aliene: and in none other, and if the donour had any reuersion by such alienation, the reuersion is discontinued, then though that by some reason it may be that such remainder shall beginne his being and his grossing immediatly after such alienation made to a stranger that hath by the same alienation franktenement and fee simple, and also if such remainder should

be

be good, then might he enter vpon the alienee
wher he had no maner of right before the alie-
nation, which should be inconuenient. The 3.
cause is, when the condition is such that the
alienee son alien &c. that his estate shall cease, &
shall be void &c. then after such alienation &c.
may the donor enter by force of such condition
as it seemeth, and so the donor or his heires
in such case ought more sooner to haue the land,
then the second some that hath no right before
such alienation &c. and so it seemeth that such
remainders in the case aforesaid be void.

Also, at the common law before the statute
of Glouc'ster, if tenaunt by the curtesie had
alienedin fee with warrantie accordaunt, af-
ter his decease this was a barre to the heir &c.
as it appeareth by the wordes of the same
statute: But it is remedied by the same statute
that the warranty of the tenant by the curte-
sie shall bee no barre to the heire, except hee
haue ynough by discent by the tenaunt by the
curtesie, for before the said statute that was a
collaterall warrantie to the heire, because hee
coulde not conuey any title of discent to the
tenementes by the tenant by the curtesie, but
onely by his mother or other of his auncestors
&c. and that is the cause why it was collateral
warranty. But if a man enheriter, take a
wife, which haue issue a sonne betweene them
and the father dieth, & the sonne entreth into
the lande, and endoweth his mother, and after
his mother alieneth that that shee hath in her
power

dower to another in fée, with warranty according, and after dieth, and the warranty discendeth to the sonne, now the sonne shall bée barred to demaund the same land because of the said warrantie, because that such collaterall warrantie of tenant in dower is not remedied by any statute. The same law is when tenant for terme of life maketh an alienation with warranty &c. and dieth, and the warrãtie discendeth to him that had the reuersion or the remainder &c. they shall be barred by such warrantie &c.

Also, in the said case if it so were, that when the tenaunt in dower alieneth etc. the heire was within age, and also at that time that the warranty discendeth vpon him, he was within age, in this case the heire may after enter vppon the alienée notwithstanding the warranty discended &c. because that no laches shal be adiudged in the heire within age, that hée entred not vppon the alienée in the life of the tenaunt in dower, but if the heire was within age at the time of the alienation, and after he came to full age in the life of the tenaunt in dower, and so beyng of full age, he entred not in the life of the tenaunt in dower, and after the tenant in dower dieth, there peraduenture the heire shalbe barred by such warranty because it shall be accounted his folly that he beyng of full age, entred not in the life of the tenant in dower &c.

Also, it is spoken in the ende of the sayd

estatute

eſtatute of Glouceſter, that ſpeaketh of the alienation with warranty made by the tenant by the curteſie in ſuch forme.

Alſo, in the ſame maner the heire of the woman after the death of his father and mother ſhall not be barred of action, if he demaund the heritage or ꝑ mariage of his mother by a writ of entre that his father aliened in the time of his mother, whereof no fine is leuied in the kings court &c. And ſo by force of the ſame ſtatute if the husband of the wife alien the heritage or mariage of his wife in fee with warranty &c. by his deede in the countrey, this is cleere law that this warranty ſhal not bar the heir, except he haue ynough by diſcent &c. But the doubt is, if that the husband alien the heritage of his wife by fine leuied in the kings courts with warranty &c. if this ſhall bar the heire without any diſcent in value &c. And as to that I will ſay here certaine reaſons that I haue heard ſay in this matter. I heard my maſter ſir Richard Newton late chief Juſtice of the common place ſay once in the ſame place that ſuch warranty that the baron maketh by fine leuied in the kings Court, ſhall barre the heire, though that he haue nothing by diſcent, becauſe the ſtatute ſaith, whereof no fine is leuied in the kings court &c. And ſo by his opinion, this warranty by fine &c. abideth yet a collaterall warranty, as it was at the common law not remedied by the ſaid eſtatute, becauſe that the ſaid eſtatute accepteth the alie-

nation by fine with warranty. And some other haue said & yet say the contrary, & this is their proofe, that as by the same chapter of the said estatute it is ordeined, that the warrantie of the tenant by the curtesie shall not barre the heire, except he haue ynough by discent &c. though that the tenant by the curtesie leuie a fine of the same landes with warrantie &c. as strongly as he can, yet this warrantie shal not barre the heir, except he haue assets or ynough by discent &c. And I beleeue that this is law, and therefore they say, that it should be inconuenient to vnderstand the statut in such form that a man ℣ hath not but in the right of his wife, may by fine leuied by himselfe of the tenementes that hée hath but in right of his wife with warrantie &c. barre the heire of the said tenements without discent of the fée simple &c. where the tenant by the curtesie cannot do it. But they haue said, that the statute shall be vnderstood after this forme, that is to say, where the Statute speaketh, whereof no fine, is leuied in the Kinges Court, that is to say, whereof no lawfull fine is rightfully leuied in the same kings Court, and that is, whereof no fine of the husband and his wife is leuied in the kings court, for at the time of the making of the said statute, euery estate of landes or tenementes that any man or woman had that should discende to his heire, was fée simple without condition or vpon condition in déede or in lawe. And because that such fine then

might

might lawfully haue bin leuied by the husbād and his wife, and that if the heires of the husband warrant &c. such warranty shall barre the heire &c.

And so they say that this is the vnderstanding of the said statute, for if the husband and the wife made a feoffement in fee by deede in the countrey, the heire after the decease of the husband & the wife shall haue a writ of Entre sur cui in vita &c. notwithstanding the warranty of the husband: Then if no such exception was made in the statute of the fine leuied &c. then the heire should haue the writ of Entre &c. notwithstanding the fine leuied by the husband and the wife, because that the words of the statute before the exception of the fine leuied &c. be generally &c. that is to say, that the heire of the woman after the death of her husband and the wife, shall not be barred of action, if he demand the heritage or the mariage of his mother by a writ of Entre, that his father alened in the time of his mother, and so it should be in ỹ case of the statute, except such words were, that is to say, whereof no fine is leuied in the Kinges court: and so they say, that this is to be vnderstood, whereof no fine by the husband & the wife is leuied in ỹ kings Court, the which is lawfully leuied in such case: for if ỹ Iustices haue knowledge ỹ a mā ỹ hath nothing but in ỹ right of his wife, will leuy a fine in his name onely, they will not, nor ought not to take such fine to be leuied by the hus-

husband only without naming the wife, therfore inquire of this matter.

Also, it is to wit, that in such words where the heire demaundeth the heritage or mariage of his mother, this word (where) is a diſiuntiue, and is as much to say, if the heir demand the heritage of his mother, that is to be vnderstood the tenements that his mother had in fée simple by diſcent, or by purchase. or if the heir demaund the mariage of his mother, that is to say, the tenements that were giuen vnto his mother in frankmariage.

Also, where it is moued in diuers dédes these words in Latine, Ego & hæred. mei &c. warrãtiſabimus, & inperpetuum defendemus, it is to séé what effect hath that word Defendemus in such dées: & it séemeth that it hath not the effect of warrantiſe, nor comprehẽdeth any clause of warrantiſe, for if it should be so, it taketh effect or cause of warrantiſe, then it should be put in some fines leuied in the kings Court. And a man neuer saw that this word Defendemus was in fine, but onely this word Warrantizabimus, by which it séemeth, this verbe Warrantizo maketh warranty, and is the cause of warrantiſe, and none other word in our lawe.

Also if Tenaunt in the taile be ſeiſed of tenements deuiſable by teſtament after the cuſtome &c. and the Tenant in the taile alieneth the tenements to his brother in fée, and hath iſſue and dieth, and after his brother deuiſeth

by

by his testament ꝑ same tenements to another in fee, & bindeth him and his heires to warrãtise &c. and dieth without issue, it seemeth that this warranty shall not barre the issue in the taile, if he will sue his writ of Formedon, because that the warranty discended not to the issue in the taile, in so much as the vncle of the issue was not bound by force of the same warranty in his life. And the cause ꝑ he could not warrant ꝑ land in his life, is in so much that the deuise could not take any execution or effect but after his decease, & in so much that the vncle in his life was not holde to warranty, such warrantise may not discend from him to ꝑ issue in the taile &c. for nothing may discend from the auncestor to his heire, but the same that was in the auncestor. Also a warranty may not go after the nature of tenementes by custome, but onely after the forme of ꝑ cõmon law. For if tenant in tail be seised of teneméts in borough english, where the custome is, that all tenementes of the same borough, ought to discend to the yongest son, & he discontinueth the taile with warranty &c. and hath issue 2. sons & dieth seised of other lands & tenements in the same borough in fée simple to the value and more of the tenements tailed &c. yet the yongest son shall haue a Formedone of the tenements tayled, and shall not be barred by the warrantise of his father, though though to him discended in fée simple from the same father after the custome, for this that the warrantise

ranty discendeth vpon the elder brother that is in full title &c. and not vpon the yongest son. In the same maner it is of collateral warrantise made of such tenements where ỹ warrantise discendeth to the elder sonne &c. this shall not barre the ponger son &c. In the same maner it is of tenements in the Shire of Kent, which is called Gauelkinde, the which tenements be departable among ỹ brethren &c. after the custome &c. if any such warranty bee made by their auncestors, such warranty discendeth all onely to the heire ỹ is heire by the common law, & not to all the heires which are heirs of such tenements after the custome &c.

Also, if tenaunt in the taile haue issue two daughters by diuers venters and dieth, and the daughters enter, and a stranger disseiseth them of the same tenements, and one of the daughters releaseth by her deed to the disseysor al her right, and bindeth her and her heirs to warrantise and dieth without issue, in this case the sister that survniueth may well enter & put out the disseisor of all the tenements, for this that such warrantise is no discontinuance, nor collaterall warrantise to the sister ỹ survniueth, for this that they be of halfe bloud, and the one may not be heire to the other after the common law. But otherwise it is where there be daughters of tenants in the taile by one venter.

Also, if tenant in the taile let tenements to another for terme of life, the remainder to an

other

other in fee, & the collateral auncestor confirmeth the estate of the tenant for terme of life, & bindeth him and his heirs to warrantise for terme of life of ỹ tenāt for terme of life & dieth and the tenant in the tail hath issue and dieth, now this issu is barred to aske ỹ tenemēts by writ of Formedon during the life of the tenāt for terme of life, because of the collateral discent vpon the issue in the taile. But after the decease of the tenant for terme of life, the issue shal haue a Formdon &c. And vpō this I haue heard a reason that this case shall proue by an other case, that is to say, if a man let his lande to another, to haue and to hold vnto him and to his heirs for terme of an others life, and the lessour dyeth, lyuing him to whose lyfe &c. And a stranger entreth into the land, that the heire of the lesser may put him out for this that in the case next aforesaid, in so much that a mā may binde him and his heires to warrant to the tenant for terme of lyfe, all onely during the life of the tenaunt for terme of lyfe, and the warrantise discendeth to the heire of him that made the warrantise, the which warrantise is no warrantise of inheritaunce, but all onely for terme of anothers lyfe, by the same reason where tenementes be lette to a man, to haue and to holde to him and to his heires for terme of anothers lyfe, if the father die, liuing him to whose life &c. his heire shall haue the tenementes liuing him to whose life &c. For they haue said, that if a man grant

an annuitie to another, to haue & to take to him & to his heires for terme of anothers life if the grauntée die &c. That after his heire shall haue the annuitie during the life of him to whose life &c. Quære de ista materia &c.

But where such a lease or graunt is made to a man and his heires for terme of yeres, in this case the heire of the lessée & the grauntée shall neuer haue after the death of the lessée or the grauntée that, that is so letten or granted, for this that it is a chattel real, and al chattels reals by the common law, shal come to the executors of the grauntée or the lessée, & not to the heire &c.

Also in some cases it may be, that howbeit that a collaterall warrantise be made in fee &c. yet such warrantise may be defeated and antented. As the tenant in the taile discontinueth the taile in fee, & the discontinuée is disseysed, & the mother of the tenant in the tail releaseth by his deed to the disseisor al his right &c. with warrantise in fee, and dieth without issue, and the tenant in the taile hath issue & dieth, now the issue is barred of his action by force of the collaterall warrantise discending vpon him, but if after this the discontinuée enter vpō the disseisour, then may the heire in the taile haue his action of Formedon &c. for this that the warranty is antented & defeated. For when the warrantise is made vnto a man vpon any estate that then he had, if the estate be defeated, the warrantie is defeated.

In

In the same maner it is if the discontinuee make a feoffement in fee reseruing to him certein rent, & for default of paiment a reentre &c. & a collateral auncestor releaseth to the feffee & hath estate vpon condition &c. & dieth without issue, though that the warranty descended vpon the issue in the taile, yet if after the rent be behind, and the discontinuee entreth into the land &c. then the issue in the taile shall haue his recouery by a writ of Formedon, for this & the warranty collateral is defeated. And so if any such collaterall warranty be pleaded against the issue in the taile in his action of Formedon, he may shew the matter as is afore said, how the warrantie is defeated, and so he may well maintaine his action.

Also if a tenant in the tail make a feffemẽt to his vncle, & after his vncle maketh a feffemẽt in fee wᵗ warrantie &c. to another, & after the feffee of the vncle enfeffeth againe the vncle in fee, & after the vncle enfeffeth a stranger in fee wᵗout warrantie & dieth without issue, & the tenant in & taile will bring his writ of Formedon against the stranger that was last feffee, & that by the vncle, in this case the issue shall neuer be barred by the warrãty & was made by the vncle of the said first feffee of his vncle, for this that the said warrantie was defeated & aniented, for this that the vncle toke again to him as great estate of his said first feoffee to whom the warrantie was made, as the same feffee had of him. And the cause why the warrantie

rantie is antented in this case, is this, that is to say, ꝑ if the warrantise were in his force, then the vncle shall warrant a fee simple vnto himselfe, ꝑ may not be, but if the feffee made estate to the vncle for terme of life or in fee taile, sauing the reuersion vnto him &c. Or that he made a gift in the taile to the vncle, or a lease for terme of life, ꝑ remainder ouer &c. In this the warrantise is not all vtterly antiented, but it is put in suspence during the estate that the vncle had, for after this that the vncle is dead without issue, then he in the reuersion, or he in the remainder shall barre the issue in the tayle of his writ of Formdon by the collaterall warrantise in such case &c. But otherwise it is where the vncle had as great estate in the land by the feffee to whom the warrãtise was made as the feoffee had of him &c.

Also if the vncle after such fettlement made with warrantise, or a release made by him & warrantise be attaint of felony, or outlawed of felony, such collateral warranty shal not barre nor greeue the issue in the taile, for this that by the attainder of felony, the blood is corrupt betweene them &c.

Also, if tenant in the taile be disseised, and after maketh a release to the disseisor & warrantise, in fee, and after the tenant in the tayle is attaint or outlawed of felony, and hath issue and dieth, in this case the issue in the taile may enter vpon the disseisour.

And the cause is for this, ꝑ nothing maketh dis-

discontinuance in this case but the warranty, & the warranty may not discend to the issue in the taile, for this that the bloud is corrupt betweene him ꝑ made the warrantise & the issue in the taile, for the warrantise alway abideth at the common law, and the common lawe is such that when a man is outlawed or attaint of felony, which outlawry is an attainder in the law, that the bloud betweene him and his sonne and all other which should be saide his heires is corrupt, so ꝑ nothing by discent may discēd to any ꝑ may be his heire by the cōmon law: and ꝑ wife of such a mā that is so attaint shal neuer be indowed in the tenements of her husband so attaint &c. And ꝑ cause is, because men should more eschew to do felony &c. But the issue in the taile, as to the tenements tayled, is not in such case barred, because he is inheritable by force of the statute, and not by the course of the common law. And therfore such attainder of his father or his auncestor in the taile &c. shal not put him out of his right, that he should haue by force of the taile.

Also, if tenaunt in the taile enfeoffe his vncle which enfeoffeth another with warranty &c. if after the feoffē by his deede release to the vncle all maner of warranty, or all maner of couenants reals, or al maner of demaunds, by such release the warranty is extinct. And if the warranty in such case bee pleaded against the heire in the taile that bringeth his writ of Formedon to barre the heire of his

his action, if the heire laue and plede the said release &c. he shall defeate the plee in barre &c. and many other causes and matters there be whereby a man may defeate warranties.

And it is to witte, that in the same maner as collaterall warranty may be defeated by matter in deed or in law, in the same manner may lineal warranty be defeated &c. For if the heire in the taile bring a writ of Formedone, and a lineal warranty of his auncester inheritable by force of the taile be pleaded against him with that the assets to him discended of fee simple by the same auncester that made the warranty, if the heire that is demaundant may annull and defeate the warranty, this sufficeth to him, for the discent of other tenementes of fee simple make nothing to barre the heire without the warranty &c.

FINIS.

# ¶ Here beginneth the Table of this present Booke.

NOw haue I made for thée my sonne three Bookes. The first is of Estates that men haue of lands or tenements, that is to say.

Of Tenant in fée simple.
Tenant in fée taile.
Tenaunt in taile after possibility of issue extinct.
Tenant by the curtesie of England.
Tenant in Dower.
Tenant for terme of life.
Tenant for terme of yeres.
Tenant at will by the common law.
Tenant at will by the custome of the manor.

## The second Booke.

The second Booke is of homage.

Fealty.
Escuage.
Knights seruice.
Socage.
Frankalmoigne, or frée almes.
Homage auncestrell.
Graund Sergeanty.
Petie Sergeanty.
Tenure in Burgage.
Tenure in Villenage.
Of three maner of Rents, that is to say.
Rent seruice.

Rent

And these two small bookes haue I made for thee, for to vnderstand better certain chapters of the auncient Bookes of Tenures.

## The third Booke.



And know thou my sonne, that I will not that thou beleeue, that al that that I haue said in the said bookes is law, for that will I not take vpō me, nor presume: but of those things that be not law, inquire and learne of my wise masters learned in the law.

Notwithstanding, though that certaine things that be noted and specified in the saide

Bookes

Bookes be not Lawe, yet such thinges shall make thē more apt and able to vnderstand, and learne the Argumentes and the reasons of the law: For by the arguments and the reasons in the law, a man may more sooner come to the certaintie, and to the knowledge of the law.

Lex plus laudatur quando ratione probatur.

FINIS.